ATTACHMENTS

ATTACHMENT A

NOTICE OF PUBLIC HEARING

TITLE 13. CALIFORNIA AIR RESOURCES BOARD

NOTICE OF PUBLIC HEARING TO CONSIDER THE ADOPTION OF REGULATIONS LIMITING THE SULFUR CONTENT AND THE AROMATIC HYDROCARBON CONTENT OF MOTOR VEHICLE DIESEL FUEL

The Air Resources Board (the "Board" or "ARB") will conduct a public hearing at the time and place noted below to consider adoption of statewide regulations which, starting January 1, 1993, would limit the permissible sulfur content of motor vehicle diesel fuel to 500 parts per million (ppm) and would limit the aromatic hydrocarbon content of motor vehicle diesel fuel to 10 percent with a 20 percent limit for small refiners.

DATE: November 17, 1988

TIME: 9:00 a.m.

PLACE: South Coast Air Quality Management District
McCandless Auditorium
9150 Flair Drive
El Monte, California

This item will be considered at a two-day meeting of the Board which will commence at 9:00 a.m., November 17, 1988, and will continue at 8:30 a.m., November 18, 1988. This item may not be considered until November 18, 1988. Please consult the agenda for the meeting, which will be available at least 10 days before November 17, 1988, to determine the day on which this item will be considered.

INFORMATIVE DIGEST OF PROPOSED ACTION

Sections Affected: Proposed adoption of Sections 2255 and 2256, Title 13, California Code of Regulations, and proposed amendments to Section 2252, Title 13, California Code of Regulations.

An existing regulation of the Board, Section 2252 of Title 13, California Code of Regulations, establishes a 500 ppm maximum sulfur content standard for diesel fuel sold, offered for sale, or transferred for use in motor vehicles in the South Coast Air Basin or Ventura County ("south coast control area"). The regulation includes a partial exemption for small refiners, which ends effective January 1, 1989. This is presently the Board's only standard pertaining to motor vehicle diesel fuel.

A. Proposed Statewide Limit on the Sulfur Content of Diesel Fuel

Sulfur contained in fuels, including motor vehicle diesel fuel, is converted to sulfur dioxide and particulate sulfate when the fuel is burned. Sulfur dioxide (SO_2) is emitted as a gaseous pollutant, part of which also converts to particulate sulfates in the atmosphere. Nearly all areas of the state exceed state ambient standards for particulate matter (measured as "PM_{10}"),

and a number of areas also exceed the national standard. The staff is proposing a statewide diesel fuel sulfur content regulation including the following major elements.

The Sulfur Content Limit. The proposed regulation would impose a statewide sulfur content limit on motor vehicle diesel fuel of 500 ppm, commencing January 1, 1993. Except in the South Coast Air Basin and Ventura County, the sulfur content of diesel fuel currently averages 2800 ppm. The 500 ppm limit would apply to all motor vehicle diesel fuel in the state, regardless of who produced or imported the fuel.

In order to permit the practice of blending jet fuel into diesel fuel sold at higher elevations during the wintertime to achieve adequate flow properties, the regulation would provide that the 500 ppm standard does not apply where two conditions are met: (1) the person selling the diesel fuel demonstrates that he or she has taken reasonable precautions to assure that the diesel fuel will be dispensed to vehicles only at altitudes of 3000 feet above sea level and only between November 1 and March 31, and (2) the sulfur content of the diesel fuel does not exceed 1500 ppm.

Prohibited Activities Involving Diesel Fuel Exceeding the Sulfur Content Limit. The proposed regulation prohibits the sale, offer for sale, or supply of vehicular diesel fuel exceeding the standard. Like the Board's other fuels regulations, the sulfur content limit would apply throughout the diesel fuel distribution network.

The regulation would contain a definition of "vehicular diesel fuel" identical to the existing Section 2252(f)(4) definition of "diesel fuel for use in motor vehicles in the south coast control area" except for changes in the geographic references. The definition is intended to prevent unregulated non-vehicular diesel fuel from being sold as vehicle fuel. Diesel fuel which meets any of three tests would be included in the definition: (1) the fuel is not conspicuously identified as a fuel that may not lawfully be dispensed to motor vehicles in the control area; (2) the seller or supplier knows the diesel fuel will be used in motor vehicles in California, or (3) the seller or supplier reasonably should know the diesel fuel will be so used and s/he has not received a declaration stating that the purchaser or recipient will not sell the fuel for dispensing, or dispense it, into motor vehicles in California.

To help assure the applicability of the Health and Safety Code Section 43016 "per vehicle" penalties, the regulation would provide that each retail sale of diesel fuel for use in a motor vehicle, and each supply of diesel fuel into a motor vehicle fuel tank, is also deemed a sale by any person who previously sold the fuel in violation of the substantive standards.

Test Method. The test method for determining the sulfur content of diesel fuel would be American Society for Testing and Materials (ASTM) Method D 2622-82, or any other method determined by the Executive Officer to give equivalent results.

Variances. Variances from the sulfur content limits would be authorized in essentially the same manner as in Section 2252. Temporary variances could be issued in limited circumstances to avoid extraordinary hardship.

Each producer would be required to submit a compliance schedule by the beginning of 1990, with annual updates due January 1991 and 1992. A variance based on a compliance plan involving the installation of major additional equipment could not be issued if installation of the equipment had not been included in the compliance schedule and updates.

Amendment to Section 2252--Sulfur Content of Diesel Fuel in the South Coast Control Area. In order to avoid potential conflicts between the proposed statewide limits in Section 2255 and the existing south coast control area limits in Section 2252, a proposed amendment to Section 2252 would provide that the section does not apply to diesel fuel sold, offered for sale, or transferred on or after January 1, 1993.

B. Proposed Statewide Limit on the Aromatic Hydrocarbon Content of Vehicular Diesel Fuel

Lower levels of aromatic hydrocarbons in diesel fuel result in lower levels of emissions of particulate matter and oxides of nitrogen (NOx). Emissions of NOx contribute to a variety of air quality problems, including increased ambient concentrations of ozone, nitrogen dioxide, and particulate matter. Federal and state ambient air quality standards for these pollutants are violated to varying degrees in different areas of the state. Particulate matter emissions contribute to violations of the federal and state particulate matter standards, and result in degraded visibility and soiling. Particulate matter from diesel vehicles contains a number of potentially carcinogenic pollutants. The staff is proposing a statewide regulation limiting the aromatic hydrocarbon content of diesel fuel, including the following major elements.

The Basic Aromatic Hydrocarbon Limit. The regulation would impose a basic statewide aromatic hydrocarbon limit on motor vehicle diesel fuel of 10 percent by volume.

Small Refiner Diesel Fuel. For technical reasons it is more costly on a per gallon basis for small refiners to produce diesel fuel with low aromatic content than it is for large refiners. To maintain reasonable competitive balance, the regulation would provide that vehicular diesel fuel produced by small refiners is subject to a less stringent 20 percent limit on aromatic hydrocarbon content.

The small refiner definition would be based on the existing definition in Section 2252, with some modifications. A small refiner's California refinery could not have a capacity of more than 50,000 barrels per stream day (bpsd) at all times since January 1, 1978. The refinery could not at any time since September 1, 1988, be owned or controlled by a refiner that at the same time controls California crude capacity over 50,000 bpsd or U.S. crude capacity exceeding 137,500 bpsd.

An annual cap would be imposed on the amount of vehicular diesel fuel a small refiner could produce under the less stringent limit. The cap would be an annual volume equal to 55 percent of the average of the highest three year annual production volumes of distillate fuel, including diesel fuel, in 1983-1987 at the small refiner's refinery, as reported in required annual reports to the California Energy Commission (CEC). Any vehicular diesel fuel produced in excess of this cap would be subject to the 10 percent limit.

A refiner seeking to be subject to the 20 percent limit would have to submit an application containing information necessary for the ARB to evaluate whether the refiner qualifies. The lower 10 percent limit would immediately apply whenever the refiner ceases to meet the small refiner definition.

All vehicular diesel fuel consecutively produced in a calendar year would be counted against a small refiner's cap until the annual cap volume is reached. Diesel fuel supplied from a small refiner's refinery in any quarter where less than 25 percent of the diesel fuel supplied from the refinery was produced from distillation of crude oil at the refinery would be subject to the 10 percent limit. Small refiners would be required to submit periodic reports similar to those required under Section 2252.

Designated Alternative Limits and Offsetting. Producing motor vehicle diesel fuel such that a close tolerance to the aromatic hydrocarbon content limit is maintained may significantly reduce refiners' costs. However, in operating in this manner refiners could be expected to produce occasional batches of diesel fuel that exceed the specified limit. To provide reasonable flexibility in refinery operations the regulation would have provisions, similar to those contained in the ARB's lead in gasoline regulation, allowing the "offsetting" of high aromatic hydrocarbon diesel fuel batches subject to the basic 10 percent limit. A producer or importer would be permitted to sell batches of diesel fuel with a "designated alternative limit" exceeding 10 percent aromatic hydrocarbon content as long as the batch is reported to the ARB and the producer within 90 days before or after transfers sufficient quantities of diesel fuel with lower designated alternative limits to offset fully the higher aromatic content. Unless a designated alternative limit is formally assigned to a batch in accordance with this provision, the basic 10 percent limit would be enforced.

Notification of a final blend's designated alternative limit and volume would have to be received by the Executive Officer before the start of physical transfer of the diesel fuel from the production or importation facility, and in no case less than 12 hours before the producer either completes physical transfer or commingles the blend. Notifications of designated alternative limit batches would be permitted after the specified time periods if the Executive Officer determines the delay was not caused by the intentional or negligent conduct of the producer or importer. The 90-day offset period runs from the start of physical transfer of the high aromatic hydrocarbon blend to the completion of physical transfer of the low aromatic hydrocarbon blend. The regulation would authorize the use of protocols between the Executive Officer and an individual producer or importer to specify how the designated alternative limit requirements are applied to the producer's or importer's operations.

To be sure that the flexibility provided to refiners is not abused, the sale, offer for sale, or supply of vehicular diesel fuel which has been reported pursuant to the designated alternative limit provisions would be prohibited if the aromatic hydrocarbon content exceeds the designated limit, or if the excess aromatic hydrocarbon content is not fully offset. The regulation would prohibit selling vehicular diesel fuel in a blend with a designated alternative limit of more than 10 percent aromatic hydrocarbon if the total volume of the blend sold exceeds the volume reported. It would similarly prohibit selling vehicular diesel fuel in a blend with a designated alternative limit of less than 10 percent aromatic hydrocarbon if the total volume of the blend sold is less than the volume reported.

Required Testing and Recordkeeping. Producers and importers would be required to sample and test each final blend of vehicular diesel fuel for aromatic hydrocarbon content, and maintain specified records for two years. They would be required to provide the records to the ARB within 20 days of a written request. Diesel fuel not tested would be deemed to have an aromatic hydrocarbon content exceeding 10 percent, unless the producer or importer demonstrates to the contrary. A designated alternative limit assigned by a refiner could not be less than the aromatic hydrocarbon content as shown by the refiner's required tests. The regulation would authorize protocols with the Executive Officer to specify alternative sampling, recordkeeping, or small refiner reporting requirements.

Test Method. The test method for determining the aromatic hydrocarbon content of diesel fuel would be ASTM Test Method D 1319-84, or any other method determined by the Executive Officer to give equivalent results.

Waivers for Diesel Fuel Containing Certain Additives. During workshops it has been suggested that technological innovation could produce additives which are as effective at reducing emissions as lowering the aromatic content through the refining process. To allow for this possibility the 10 percent aromatic hydrocarbon limit could be waived by the Executive Officer for a blend of diesel fuel containing an additive if the Executive Officer determines, upon application, that the blend results in no greater emissions of any criteria pollutant, criteria pollutant precursor, or toxic air contaminant than vehicular diesel fuel meeting the 10 percent limit.

Other. Except as otherwise indicated, provisions on prohibited activities, definition of vehicular diesel fuel, sanctions for violations, and variances would be essentially identical to those in proposed Section 2255 regarding sulfur content of diesel fuel.

AVAILABILITY OF DOCUMENTS AND CONTACT PERSON

The Board staff has prepared a Staff Report on this proposal, which includes the initial statement of reasons for the proposed action and a summary of the environmental impacts, if any, of the proposal. The staff has also prepared a Technical Support Document which contains a more extensive discussion of the proposal. The Staff Report, the full text of the proposed regulations, the Technical Support Document, and any other information on which the proposal is based will be available for inspection and may be obtained at the ARB's Public Information Office, 1102 Q Street, Sacramento, CA 95814,

(916) 322-2990, at least 45 days prior to the scheduled hearing. Copies of the documents may be obtained at the Board's Public Information Office.

Further inquiries regarding this matter should be directed to Mr. Dean C. Simeroth, Chief, Criteria Pollutants Branch, Stationary Source Division, 1102 Q Street, Sacramento, California 95814 (916/322-6020).

COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED

In developing the proposed regulations, the staff evaluated the potential cost impact of the proposed actions on private persons or businesses directly affected. Large refiners would require new processing equipment to meet the sulfur and aromatic hydrocarbon content requirements. The staff estimates that the capital investment required to purchase the needed equipment would be about $550 million. Depending on which of several ways that small refiners could use to meet the separate proposed aromatic hydrocarbon content limit for small refiners, the capital investment for producing the proposed small refiner sulfur and aromatic hydrocarbon content limit would be an estimated $100 million to $140 million. The staff estimates that the cost to the refining industry as a whole would be 11 cents to 12 cents per gallon of diesel fuel produced. The cost-effectiveness of the proposed action would be about $3.00 per pound of total pollutants reduced.

The Executive Officer has determined that the proposed action would not require small businesses, as defined in Government Code Section 11342(e), to necessarily incur any costs in reasonable compliance with the proposed action. Under Section 11342(e), small businesses do not include petroleum refiners.

The Board's Executive Officer has determined that the regulation 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 costs or savings to local agencies.

In addition, the Board must determine that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be both 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, no later than 12:00 noon, November 16, 1988 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 to the attention of staff, in advance of the hearing, any suggestions for modification of the proposed regulations.

STATUTORY AUTHORITY AND HEARING PROCEDURES

These regulations are proposed under that authority granted in Sections 39600, 39601, 43013, and 43101 of the Health and Safety Code. The regulations are proposed to implement, interpret, or make specific Sections 39000, 39001, 39002, 39003, 39500, 39315, 39516, 41511, 43000, 43016, 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 of the Government Code.

Following the public hearing, the Board may adopt the proposed regulations as proposed or with nonsubstantial or grammatical modifications. The Board may also adopt the proposed regulations with other modifications if the regulation as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulation as modified could result from the proposed regulatory action; in such event the full text of the regulations with the modifications clearly indicated will be made available to the public, for written comment, at least 15 days before they are adopted. Possible modifications could include, but are not limited to, a change in the numerical standard for aromatic hydrocarbon content of diesel fuel. The public may request that text of the modified regulations from the Board's Public Information Office, 1102 Q Street, Sacramento, CA 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

James D. Boyd
Executive Officer

Date: September 20, 1988

ATTACHMENT B

PROPOSED SECTION 2255 -- SULFUR CONTENT

OF MOTOR VEHICLE DIESEL FUEL

NOTE: The entire text of Section 2255 set forth below is new language proposed to be added to the California Code of Regulations.

Section 2255. Sulfur Content of Diesel Fuel

(a) Regulatory Standard.

(1) On or after January 1, 1993, no person shall sell, offer for sale, or supply any vehicular diesel fuel which has a sulfur content exceeding 500 parts per million by weight.

(2) Subsection (a)(1) shall not apply to a transaction where: (i) the person selling, offering for sale, or supplying the diesel fuel demonstrates that s/he has taken reasonable precautions to assure that the diesel fuel will be dispensed to motor vehicles only at altitutes above 3000 feet above sea level and only between November 1 and March 31, and (ii) the diesel fuel has a sulfur content not exceeding 1500 parts per million by weight.

(3) Subsection (a)(1) shall not apply to a sale, offer for sale, or supply of 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.

(4) 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 or supply by any person who previously sold or supplied such diesel fuel in violation of subsection (a)(1).

(b) **Definitions.**

For the purposes of this section:

(1) "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.

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

(3) "Further process" means to perform any activity on diesel fuel, including distillation, desulfurization, or blending, for the purpose of bringing the diesel fuel into compliance with the standard in subsection (a)(1).

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

(5) "Produce" means to convert liquid compounds which are not diesel fuel into diesel fuel.

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

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

(8) "Refinery" means a facility that produces liquid fuels by distilling petroleum.

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

(10) "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.

(c) <u>Test Method.</u>

The sulfur content of diesel fuel limitation specified in subsection (a)(1) shall be determined by ASTM Test Method D 2622-82, or any other test method determined by the executive officer to give equivalent results.

(d) <u>Presumed Sulfur Content of Diesel Fuel Represented As Being for Nonvehicular Use.</u>

All diesel fuel which has been identified or represented as a fuel which may not be dispensed into motor vehicles in California shall be deemed to have a sulfur content exceeding 500 parts per million by weight, as determined by a test method identified in subsection (c), unless the fuel is tested in accordance with a method identified in subsection (c) and is shown to have a sulfur content of 500 parts per million by weight or less.

(e) <u>Variances.</u>

(1) Any person who cannot comply with the requirements set forth in subsection (a)(1) because of extraordinary reasons beyond the person's reasonable control may apply to the executive officer for a variance. The application shall set forth:

(A) the specific grounds upon which the variance is sought;

(B) the proposed date(s) by which compliance with the provisions of subsection (a)(1) will be achieved; and

(C) a plan reasonably detailing the method by which compliance will be achieved.

(2) Upon receipt of an application for a variance containing the information required in subsection (e)(1), the executive officer shall hold a hearing to determine whether, or under what conditions and to what extent, a variance from the requirements in established by subsection (a)(1) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Administrative Notice Register and sent to every person who requests such notice, not less than 20 days prior to the hearing.

(3) At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(4) No variance shall be granted unless all of the following findings are made:

(A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with subsection (a)(1) would result in an extraordinary economic hardship;

(B) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance.

(C) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(5) Any variance order shall specify a final compliance date by which the requirements in subsection (a)(1) will be achieved. Any variance order shall also contain a condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions, including limitations on the sulfur content of diesel fuel produced for use in motor vehicles, that the executive officer, as a result of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(6) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other

work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(7) No variance from the requirements set forth in subsection (a)(1) based on a plan for compliance which includes the installation of major additional equipment shall be issued to a producer where installation of the equipment was not included in a compliance plan and updates submitted pursuant to subsection (f). No such variance shall have a duration of more than three years.

(8) No variance which is issued due to conditions of breakdown, repair, or malfunction of equipment shall have a duration, including extensions, of more than six months.

(9) The executive officer may, after holding a hearing without complying with the provisions of subsections (e)(2) and (e)(3), issue an emergency variance to a person from the requirements of subsections (a)(1) upon a showing or reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. In connection with the issuance of an emergency variance, the executive officer may waive the requirements of subsection (e)(6). No emergency variance may

extend for a period of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of subsection (a)(1) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in subsection (e)(4) should be made. The executive officer shall maintain a list of persons who have informed the executive officer in writing of their desire to be notified by telephone in advance of any hearing held pursuant to this paragraph (e)(9), and shall provide advance telephone notice to any such person.

(10) A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition.

(11) Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements of subsection (a)(1) after holding a hearing in accordance with the provisions of subsections (e)(2) and (e)(3).

(f) <u>Submittal of Compliance Plan.</u>

Each producer shall, by January 1, 1990, submit to the executive officer a plan showing the producer's schedule for achieving compliance with subsection (a)(1). Each producer shall, by January 1, 1991 and January 1, 1992, submit an update of the plan.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43101 of the Health and Safety Code. Reference: Sections 39000, 39001, 39002, 39003, 39500, 39315, 39516, 41511, 43000, 43016, 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).

ATTACHMENT C

PROPO9SED SECTION 2256 -- AROMATIC HYDROCARBON

CONTENT OF MOTOR VEHICLE DIESEL FUEL

NOTE: The entire text of Section 2256 set forth below is new language proposed to be added to the California Code of Regulations.

Section 2256. Aromatic Hydrocarbon Content of Diesel Fuel

(a) Regulatory Standard.

(1) On or after January 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) In the case of vehicular diesel fuel that has been reported in accordance with all of the requirements of subsection (d),

(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 is exempt under subsection (e) and the aromatic hydrocarbon content does not exceed 20 percent by volume.

(2) Subsection (a)(1) shall not apply to the sale, offer for sale, or supply of any diesel fuel blend for which the executive officer has issued a waiver pursuant to subsection (g).

(3) 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.

(4) 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).

(b) Definitions.

For the purposes of this section:

(1) "Criteria pollutant" means any pollutant for which the state board or the U.S. Environmental Protection Agency has established an ambient air quality standard pursuant to Division 26 of the Health and Safety Code or the federal Clean Air Act.

(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.

(4) "Exempt volume" means 55 percent of the average of the highest three year 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 as required by the Petroleum Industry Information Reporting Act of 1980 (Public Resources Code Sections 25350 et seq.).

(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) "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).

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

(9) "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.

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

(11) "Produce" means to convert liquid compounds which are not diesel fuel into diesel fuel; provided that 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 the entire volume of the resulting blend and the person who initially converted non-diesel compounds into the acquired diesel fuel has also produced the volume of acquired 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.

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

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

(14) "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.

(15) "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.

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

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

(18) "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.

(c) <u>Test Method.</u>

The aromatic hydrocarbon content limitation specified in subsection (a) shall be determined by ASTM Test Method D 1319-84, or any other test method determined by the executive officer to give equivalent results.

(d) <u>Designated Alternative Limit.</u>

(1) A producer or importer may assign a designated alternative limit in accordance with this subsection (d) to a final blend of vehicular diesel fuel produced or imported by the producer or importer. In no case may the designated alternative limit be less than the aromatic hydrocarbon content of the final blend shown by the sample and test conducted pursuant to subsection (f).

(2) The producer or importer shall notify the executive officer of the volume (in gallons) and the designated alternative limit of the final blend. This notification shall be received by the executive officer before the start of physical transfer of the diesel fuel from the production or import facility, and in no case less than 12 hours before the producer either completes physical transfer or commingles the final blend.

(3) Within 90 days before or after the start of physical transfer of any final blend of vehicular diesel fuel to which a producer or importer has assigned a designated alternative limit exceeding 10 percent, the producer or importer shall complete physical transfer from the production or import facility of vehicular diesel fuel in sufficient quantity and with a designated alternative limit sufficiently below the limit specified in subsection (a)(1)(A) to offset the volume of aromatic hydrocarbons in the diesel fuel reported in excess of the limit.

(4) If, through no intentional or negligent conduct, a producer or importer cannot report within the time period specified in subsection (d)(2), then the producer or importer shall notify the executive officer of the required data as soon as reasonably possible and shall provide a written explanation of the cause of the delay in reporting. If, based on the written explanation and the surrounding circumstances, the executive officer determines that the conditions of this subsection (d)(4) are met, timely notification shall be deemed to have occurred.

(5) The executive officer may enter into a protocol with any individual producer or importer for the purposes of specifiying how the requirements in subsections (d)(2) and (3) shall be applied to the producer's or importer's particular operations, as long as the executive officer reasonably determines that application of the regulatory requirements under the protocol is not significantly less stringent or enforceable than application of the express terms of subsections (d)(2) and (3). The terms of such a protocol shall be limited to one or more of the following: specification of alternative events from which the notification and offset periods are measured, including physical transfer from a production or import facility; provision for flexibility in the deadlines for reporting batches with designated alternative limits to accomodate normal business hours. Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(6) No person shall sell, offer for sale, or supply vehicular diesel fuel, in a final blend to which a producer or importer has assigned a designated alternative limit exceeding 10 percent aromatics content, where the total volume of the final blend sold, offered for sale, or supplied exceeds the volume reported to the executive officer pursuant to subsection (d)(2) or (5).

(7) No person shall shall sell, offer for sale or supply vehicular diesel fuel, in a final blend to which a producer or importer has assigned a designate alternative limit less than 10 percent aromatics content, where the total volume of the final blend sold, offered for sale, or supplied is less than the volume reported to the executive officer pursuant to subsection (d)(2) or (5).

(e) <u>Small Refiner Diesel Fuel.</u>

(1) The provisions of subsection (a)(1)(A) and (B) 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 in each calendar year for use in motor vehicles, up to the small refiner's exempt volume. 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.

(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 a form provided by the executive officer, 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)(15), 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)(15).

(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, 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 that 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)(15); 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).

(f) <u>Testing and Recordkeeping.</u>

(1) Each producer shall sample and test for aromatic hydrocarbon content each final blend of vehicular diesel fuel which the producer has produced, in accordance with an applicable test method identified in subsection (c). If a producer blends diesel fuel components directly to pipelines, tankships, railway tankcars or trucks and trailers, the loading(s) shall be sampled and tested for aromatic hydrocarbon content by the producer or authorized contractor. The producer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, final blend volume, and the aromatic hydrocarbon content. In the event a producer sells, offers for sale, or supplies diesel fuel which the producer claims is not vehicular diesel fuel and which has an aromatic hydrocarbon content exceeding the standard set forth in subsection (a)(1), such producer shall maintain, for two years

from the date of any sale or supply of the fuel, records demonstrating that the diesel fuel was not vehicular diesel fuel when it was sold or supplied by the producer. All diesel fuel produced by the producer and not tested as vehicular diesel fuel by the producer pursuant to this subsection shall be deemed to have an aromatic hydrocarbon content exceeding 10 percent, unless the producer demonstrates that the diesel fuel meets the requirements of subsection (a)(1).

(2) Each importer shall sample and test for aromatic hydrocarbon content each shipment of vehicular diesel fuel which the importer has imported by tankship, pipeline, railway tankcars, trucks and trailers, or other means, in accordance with an applicable test method identified in subsection (c). The importer shall maintain, for two years from the date of each sampling, records showing the sample date, product sampled, container or other vessel sampled, the volume of the shipment, and the aromatic hydrocarbon content. All diesel fuel imported by the importer and not tested as vehicular diesel fuel by the importer pursuant to this subsection shall be deemed to have an aromatic hydrocarbon content exceeding 10 percent, unless the importer demonstrates that the diesel fuel meets the requirements of subsection (a)(1).

(3) A producer or importer shall provide to the executive officer any records required to be maintained by the producer or importer pursuant to this subsection (d) within 20 days of a written request from the executive officer if the request is

received before expiration of the period during which the records are required to be maintained. Whenever a producer or importer fails to provide records regarding a final blend of vehicular diesel fuel in accordance with the requirements of this subsection, the final blend of diesel fuel shall be presumed to have been sold by the producer in violation of subsection (a)(1).

(4) The executive officer may perform any sampling and testing deemed necessary to determine compliance by any person with the requirements of subsection (a) and may require that special samples be drawn and tested at any time.

(5) The executive officer may enter into a protocol with any producer, importer, or person who sells, offers for sale, or transfers diesel fuel to a producer for the purpose of specifying alternative sampling, testing, recordkeeping, or reporting requirements which shall satisfy the provisions of subsections (f)(1), (f)(2), or (e)(3). The executive officer may only enter into such a protocol if s/he reasonably determines that application of the regulatory requirements under the protocol will be consistent with the state board's ability effectively to enforce the provisions of subsection (a). Any such protocol shall include the producer's or importer's agreement to be bound by the terms of the protocol.

(g) <u>Waivers for Diesel Fuel Containing Certain Additives.</u>

The executive officer, upon application of any producer or importer, may waive the prohibitions in subsection (a)(1) for a blend of diesel fuel containing an additive(s) if s/he determines

that the applicant has established that the blend of diesel fuel containing the additive(s), or a specified concentration thereof, results in no greater emissions of any criteria pollutant, precursor to any criteria pollutant, or any substance that has been identified by the state board as a toxic air contaminant, than vehicular diesel fuel having an aromatic hydrocarbon content not exceeding 10 percent.

(h) Variances.

(1) Any person who cannot comply with the requirements set forth in subsection (a)(1) because of extraordinary reasons beyond the person's reasonable control may apply to the executive officer for a variance. The application shall set forth:

(A) the specific grounds upon which the variance is sought;

(B) the proposed date(s) by which compliance with the provisions of subsection (a)(1) will be achieved; and

(C) a plan reasonably detailing the method by which compliance will be achieved.

(2) Upon receipt of an application for a variance containing the information required in subsection (h)(1), the executive officer shall hold a hearing to determine whether, or under what conditions and to what extent, a variance from the requirements in subsection (a)(1) is necessary and will be permitted. Notice of the time and place of the hearing shall be sent to the applicant by certified mail not less than 20 days prior to the hearing. Notice of the hearing shall also be submitted for publication in the California Regulatory Notice Register and sent

to every person who requests such notice, not less than 20 days prior to the hearing.

(3) At least 20 days prior to the hearing, the application for the variance shall be made available to the public for inspection. Interested members of the public shall be allowed a reasonable opportunity to testify at the hearing and their testimony shall be considered.

(4) No variance shall be granted unless all of the following findings are made:

(A) that, because of reasons beyond the reasonable control of the applicant, requiring compliance with subsection (a)(1) would result in an extraordinary economic hardship;

(B) that the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of air contaminants which would result from issuing the variance.

(C) that the compliance plan proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.

(5) Any variance order shall specify a final compliance date by which the requirements in subsection (a)(1) will be achieved. Any variance order shall also contain a condition that specified increments of progress necessary to assure timely compliance be achieved, and such other conditions, including limitations on the aromatic hydrocarbon content of diesel fuel produced for use in motor vehicles, that the executive officer, as a result of the

testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.

(6) The executive officer may require, as a condition of granting a variance, that a cash bond, or a bond executed by two or more good and sufficient sureties or by a corporate surety, be posted by the party to whom the variance was granted to assure performance of any construction, alteration, repair, or other work required by the terms and conditions of the variance. Such bond may provide that, if the party granted the variance fails to perform such work by the agreed date, the cash bond shall be forfeited to the state board, or the corporate surety or sureties shall have the option of promptly remedying the variance default or paying to the state board an amount, up to the amount specified in the bond, that is necessary to accomplish the work specified as a condition of the variance.

(7) No variance from the requirements set forth in subsection (a)(1) based on a plan for compliance which includes the installation of major additional equipment shall be issued to a producer where installation of the equipment was not included in a compliance plan and updates submitted pursuant to subsection (i). No such variance shall have a duration of more than three years.

(8) No variance which is issued due to conditions of breakdown, repair, or malfunction of equipment shall have a duration, including extensions, of more than six months.

(9) The executive officer may, after holding a hearing without complying with the provisions of subsections (h)(2) and (h)(3), issue an emergency variance to a person from the requirements of subsections (a)(1) upon a showing or reasonably unforeseeable extraordinary hardship and good cause that a variance is necessary. In connection with the issuance of an emergency variance, the executive officer may waive the requirements of subsection (h)(6). No emergency variance may extend for a period of more than 45 days. If the applicant for an emergency variance does not demonstrate that he or she can comply with the provisions of subsection (a)(1) within such 45-day period, an emergency variance shall not be granted unless the applicant makes a prima facie demonstration that the findings set forth in subsection (h)(4) should be made. The executive officer shall maintain a list of persons who have informed the executive officer in writing of their desire to be notified by telephone in advance of any hearing held pursuant to this paragraph (g)(9), and shall provide advance telephone notice to any such person.

(10) A variance shall cease to be effective upon failure of the party to whom the variance was granted substantially to comply with any condition.

(11) Upon the application of any person, the executive officer may review and for good cause modify or revoke a variance from the requirements of subsection (a)(1) after holding a hearing in accordance with the provisions of subsections (h)(2) and (h)(3).

(l) Submittal of Compliance Plan.

Each producer shall, by January 1, 1990, submit to the executive officer a plan showing the producer's schedule for achieving compliance with subsection (a)(1). Each producer shall, by the beginning of January 1, 1991 and January 1, 1992, submit an update of the plan.

NOTE: Authority cited: Sections 39600, 39601, 43013, and 43101 of the Health and Safety Code. Reference: Sections 39000, 39001, 39002, 39003, 39500, 39315, 39516, 41511, 43000, 43016, 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).