

FINAL STATEMENT OF REASONS

DEPARTMENT OF FOOD AND AGRICULTURE SUBMISSION OF REGULATIONS PERTAINING TO CALIFORNIA CODE OF REGULATIONS Title 4, Division 9, Chapter 6, Article 8 Add Sections 4180 and 4181

Hydrogen Fuel Specifications

Update of Initial Statement of Reasons

The Secretary of the Department of Food and Agriculture (Department) has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons or businesses than the proposed action.

The initial statement of reasons is still valid.

Changes in the Regulation

In response to written and oral comments received during the 45-day comment period and the 15-day comment period, minor changes were made to the original text to accommodate the concerns of industry commentators and Department counsel.

Section 4181 was changed to reduce confusion related to the units of measurement for the particulate concentration specification. A 4th footnote was added to better define $\mu\text{g/L @ NTP}$. The Linde Group felt the unit of measure could be confused with hydrogen energy equivalent of a liter of gasoline.

Section 4181 was changed to clarify that the Department will adopt by regulation sampling and test procedures once they are developed by an ANSI accredited standards writing organization. In addition, Section 4181 was also changed to clarify that the Department may adopt by regulation interim sampling and test procedures. The Western States Petroleum Association (WSPA) and the American Petroleum Institute (API) in both oral and written comment felt this change was needed to clarify the regulation.

Section 4181 was changed to eliminate the conditions when enforcement of this section would begin. This change was done based upon oral comments from the Department counsel.

Summary and Response to Comments Received During the 45-Day Comment Period

A total of seven letters and e-mails were received during the comment period. One organization provided both oral and written comment. One organization provided only oral comment.

COMMENTATOR NUMBER 1

BP America, Inc. offered written comments summarized as follows:

- Legislature's mandate is premature for hydrogen fuel standards. There is no need to protect consumer's hydrogen vehicles since there are none in use. The proposed standards are based upon a preliminary SAE report and no test methods have yet been developed.
- Recommends the following language be placed into the regulation:

"Test procedures have not yet been approved by an ANSI approved standards development organization (ANSI SDO) for the properties specified in this interim hydrogen quality standard. The Department of Food and Agriculture will formally adopt sampling and test procedures by regulation as they are developed. The Department of Food and Agriculture will begin enforcement of this section and required compliance with the regulation will begin once sample and test procedures have been adopted by an ANSI SDO and incorporated into the regulation by the Department."
- Supports the use of the waiver process.

RESPONSE

BP America's supporting comments are accurate. However, the California Business and Professions Code, Section 13446 requires the Department to adopt American National Standards Institute (ANSI) accredited standards by January 1, 2008. Since those standards do not yet exist, the law requires the Department to adopt interim standard by regulation. Therefore, proposed regulations are not premature and their adoption is mandated by law.

The recommended modification to the regulation is similar to that in the existing proposed regulation. However, it would add the additional restriction that would require the department to only adopt ANSI approved sampling and test procedures in any future change to the interim standards. The California

Business and Professions Code, Section 13446 requires the Department to establish standards even if an ANSI approved standards have not been developed. To be consistent with the intention of the law, the Department needs to have sampling methods and test procedures in place as quickly as possible. Any proposed test procedure or sampling technique will be reviewed by all interested parties in the adoption process. Requiring the Department to adopt only ANSI approved procedures would unnecessarily delay the full implementation of the law.

COMMENTATOR NUMBER 2

Western States Petroleum Association (WSPA) and the American Petroleum Institute (API) offered the following comments both in writing and orally:

- Supports the overall structure and approach of the proposed regulation.
- Recommends the Department adopt only test procedures developed by an ANSI approved organization.
- Recommends the Department delay the need to comply with the hydrogen fuel regulation until test procedures have been developed.

RESPONSE

The first suggested change to the proposed regulation would require the Department to only adopt ANSI approved sampling and test procedures in any future change to the interim standards. The California Business and Professions Code, Section 13446 requires the Department to establish standards by January 1, 2008. To be consistent with the intention of the law, the Department needs have sampling methods and test procedures in place as quickly as possible even if ANSI approved standards have not been developed. Any proposed test procedure and sampling technique will be reviewed by all interested parties in the adoption process. Requiring the Department to adopt only ANSI approved procedures would unnecessarily delay the full implementation of the law.

The second recommended change would delay compliance with the proposed regulation until sampling and test procedures have been adopted by regulation. The California Business and Professions Code, Section 13446 requires the Department to adopt or develop standards by January 1, 2008. The Department does not have the authority to delay the date of compliance and such a change would be inconsistent with the intent of the law.

COMMENTATOR NUMBER 3

Shell Hydrogen fully supports the proposed regulations.

COMMENTATOR NUMBER 4

The Linde Group recommends the units of measurement for particulate concentration be changed to micrograms per normal cubic meters. The Linde Group feels that the liter unit could be confused by some as being a liquid volume. They also feel that the conditions of measurement of hydrogen volume are unclear.

RESPONSE

The Department agrees that the units of measurement are unclear and should be better defined. In Section 3.10 of SAE document J2719, the volume of gas is defined as liters of hydrogen fuel at 0°C at 1 atmosphere pressure. The following footnote is proposed to clarify the proposed regulation and be consistent with SAE J2719:

µg/L @ NTP = micrograms per liter of hydrogen fuel at 0°C and 1 atmosphere pressure.

COMMENTATOR NUMBER 5

US Fuel Cell Council supports the methodology proposed to implement SB76 and compliments the Department for their involvement in the development of analytical methods and sampling techniques.

COMMENTATOR NUMBER 6

United Technologies Corporation Power supports the methodology proposed to implement SB76. They compliment the Department for their involvement in the development of analytical methods and sampling techniques.

COMMENTATOR NUMBER 7

ASTM International commends the Department for engaging all interested stakeholders to communicate the issues and concerns related to the development of regulations. They also commend the Department for actively supporting the development of sampling and test methods.

COMMENTATOR NUMBER 8

The California Air Resources Board provided oral comment and agreed with the proposed regulations.

Summary and Response to the Comments Received During the First 15-Day Comment Period

One e-mail with confirming letter was received during the first 15-day comment period.

COMMENTATOR

Western States Petroleum Association (WSPA) and the American Petroleum Institute (API) offered the following comments:

- Modify Section 4181 to add the following sentence: “Test procedures have not yet been finalized to measure the properties specified in this interim standard.”
- Modify Section 4181 to replace the word “developed” with “approved” in the following sentence:

“The Department of Food and Agriculture will formally adopt sampling and test procedures by regulation as they are ~~developed~~ **approved** by an ANSI accredited standards writing organization. In the absence of these, the Department may formally adopt interim sampling and test procedures by regulation.”

RESPONSE

The Department agrees that the suggested changes will clarify the proposed regulation. Those changes will be incorporated into a modified proposed regulation.

Summary and Response to the Comments Received During the Second 15-Day Comment Period

One e-mail with confirming letter was received during the second 15-day comment period.

COMMENTATOR

Western States Petroleum Association (WSPA) and the American Petroleum Institute (API) supported the the proposed regulatory language.

Mandate on Local Agencies and School Districts

The Department has determined that this proposal does not impose a mandate on local agencies or school districts. No reimbursement is required for Section

3591.2 under Section 17561 of the Government Code because there are no mandated costs associated with this regulation.

The Department also has determined that no savings or increased costs to any state agency, no reimbursable cost or savings under Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or savings in federal funding to the State will result from the proposed action.

The cost impact of the changes in the regulations on a representative private person or business is expected to be insignificant. The Department has determined that this action will not have a significant adverse economic impact on housing costs or California businesses, including the ability of California businesses to compete with businesses in other states.

Assessment

The Department has made an assessment that the proposed regulation would not: (1) create or eliminate jobs within California; (2) create new business or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business in California.

Alternatives Considered

The Department has determined that no alternative considered would be more effective in carrying out the purpose for which the action is proposed or would be as effective as and less burdensome to affected private persons than the proposed actions.

Public Hearing

The Department scheduled and held a public hearing to receive oral comments on the proposed regulations. The hearing was held at 1001 I Street, Sacramento, CA 95814. A tape recording of the hearing and the attendance registers are contained in the rulemaking file.