

EMERGENCY FINAL REGULATION ORDER

EMERGENCY REGULATORY AMENDMENTS DELAYING THE JANUARY 1, 2005 IMPLEMENTATION DATE FOR THE LUBRICITY STANDARD FOR MOTOR VEHICLE DIESEL FUEL

Note: The amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.

Amend section 2284(a), title 13, California Code of Regulations, to read as follows:

§ 2284. Lubricity of Diesel Fuel

(a) *Regulatory Standard.*

(1) *Standard starting in 2005*

(A) *Basic standard.* Starting ~~in January~~ May 1, 2005 in accordance with the phase-in schedule in section (a)(2), no person shall sell, offer for sale, supply, or offer for supply any vehicular diesel fuel unless at the time of the transaction the diesel fuel meets a minimum lubricity level of a maximum wear scar diameter of 520 microns based on American Society for Testing and Materials (ASTM) test method D6079-02, Standard Test Method for Evaluating Lubricity of Diesel Fuels by the High Frequency Reciprocating Rig (HFRR), which is incorporated herein by reference.

(B) *Sunset.* The standard in section 2284(a)(1)(A) does not apply at any time that California diesel fuel must meet a minimum lubricity level of a maximum wear scar diameter of 520 microns based on ASTM test method D6079, Standard Test Method for Evaluating Lubricity of Diesel Fuels by the High Frequency Reciprocating Rig (HFRR), pursuant to section 4143, title 4, California Code of Regulations.

(2) *2005 phase-in schedule.* The lubricity standard in section (a)(1) shall apply:

(A) Starting ~~January 1~~ May 1, 2005 to all sales, supplies, or offers of vehicular diesel fuel from the production facility or import facility at which it was produced or imported.

(B) Starting ~~February 15~~ May 1, 2005 to all sales, supplies, or offers of vehicular diesel fuel except for transactions directly involving:

1. The fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, or
2. The delivery of vehicular diesel fuel from a bulk plant to a retail outlet or purchaser-consumer facility.

(C) Starting ~~April 1~~ May 1, 2005 to all sales, supplies, offers or movements of vehicular diesel, including transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchase-consumer facility.

(2.5) Implementation of 2005 standard for diesel fuel represented as having a sulfur content not exceeding 15 parts per million. The basic standard in section 2284(a)(1) starts January 1, 2005, for vehicular diesel fuel represented as having a sulfur content not exceeding 15 parts per million. For this fuel, the phase-in start dates for the events identified in section 2284(a)(2)(A), (B), and (C) respectively are January 1, 2005, February 15, 2005, and April 1, 2005 respectively.

(3) *Standard starting in 2006.* [Reserved]

(4) *2006 phase-in schedule.* [Reserved]

(5) *Exception for upstream activities.* Subsection (a)(1) shall not apply to transactions where the person selling, supplying, or offering the motor vehicle diesel fuel demonstrates that: [i] the diesel fuel has not yet been sold, offered, or supplied from the final distribution facility, [ii] the diesel fuel is identified as fuel to which a lubricity additive must be added before the diesel fuel is supplied from the final distribution facility; and either [iii] the person has taken reasonably prudent precautions to assure that he or she will bring the diesel fuel into satisfaction with the requirements of subsection (a)(1) before it is sold, supplied or offered from the final distribution facility, or [iv] at or before the time of the transaction the person has obtained a written statement from the purchaser, recipient, or offeree of the diesel fuel stating that he or she will take reasonably prudent precautions to assure that the diesel fuel will be brought into compliance with the requirements of subsection (a)(1) before it is sold, supplied or offered from the final distribution facility.

(6) *Correction of diesel fuel downstream of the final distribution facility.* Subsection (a)(1) shall not apply to the sale, supply, or offer of vehicular diesel fuel from a final distribution facility where the person selling, supplying, or offering the diesel fuel demonstrates that the diesel fuel will be corrected to comply with subsection (a)(1) as applicable prior to the sale of diesel fuel from the retail outlet. If such corrective action is taken, the producer, importer, or distributor of the diesel fuel must notify the Enforcement Division of the Air Resources Board by telephone or in writing within 2 business days of the correction. The person must also maintain records to document each occurrence for at least one year, and make the records available to the Executive Officer or his/her designee within 20 days of a written request. This subsection (a)(6) exception does not apply to vehicular diesel fuel found by an enforcement inspector to be in noncompliance, unless the person selling, supplying, or offering the diesel fuel affirmatively demonstrates that he or she would have corrected the diesel fuel independent of the inspection.

(7) *Applicability of standards to California nonvehicular diesel fuel.* Activities involving California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use

in locomotives or marine vessels) are also subject to this section to the extent required by section 93114, title 17, California Code of Regulations. As adopted, section 93114 requires each air pollution control or air quality management district by December 12, 2004, to treat this section 2284 as applying to California nonvehicular diesel fuel (other than diesel fuel offered, sold or supplied solely for use in locomotives or marine vessels) as if it were vehicular diesel fuel, and to enforce those requirements regarding California nonvehicular diesel fuel, unless the district has proposed its own airborne toxic control measure to reduce particulate emissions from diesel-fueled engines through standards for nonvehicular diesel fuel.

(b) *Definitions.* For the purposes of this section:

- (1) "Bulk purchaser-consumer" means a person that purchases or otherwise obtains diesel fuel in bulk and then dispenses it into the fuel tanks of motor vehicles owned or operated by the person.
- (2) "Bulk plant" means an intermediate diesel fuel distribution facility where delivery of diesel fuel to and from the facility is solely by truck.
- (3) "California nonvehicular diesel fuel" means any diesel fuel that is not vehicular diesel fuel and that is sold or made available for use in engines in California.
- (4) "Diesel fuel" means any fuel that is commonly or commercially known, sold or represented as diesel fuel, including any mixture of primarily liquid hydrocarbons that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.
- (5) "Executive Officer" means the executive officer of the Air Resources Board, or his or her designee.
- (6) "Marine vessel" has the meaning set forth in section 39037.1 of the Health and Safety Code.
- (7) "Motor vehicle" has the same meaning as defined in section 415 of the Vehicle Code.
- (8) "Produce" means to convert liquid compounds which are not diesel fuel into diesel fuel.
- (9) "Producer" means any person who produces vehicular diesel fuel in California.
- (10) "Refiner" means any person who owns, leases, operates, controls or supervises a refinery.
- (11) "Refinery" means a facility that produces liquid fuels by distilling petroleum.
- (12) "Supply" means to provide or transfer a product to a physically separate facility, vehicle, or transportation system.

(13) "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.

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).