

MODIFICATIONS TO THE PROPOSED REGULATION ORDER SHOWING MODIFIED EXCERPTS OF THE REGULATIONS

Proposed Amendments to the California Diesel Fuel Regulations

Note: The text of the originally proposed amendments is shown in underline to indicate additions and ~~strikeout~~ to indicate deletions, compared to the preexisting regulatory language. The proposed modifications to the original proposal are shown in double underline to indicate additions and ~~double strike-out~~ to indicate deletions. Only excerpts containing modified text are shown; the symbol "* * * * *" indicates that regulatory text not being modified is not shown. The "Commentaries" shown in indented italics are not part of the regulations. Changes in the font of subsection headings reflect corrections of printing errors in Barclays California Code of Regulations, and subsection headings are to be shown in italics in Barclays.

1. Amend section 2281, title 13, California Code of Regulations, to read as follows:

§ 2281. Sulfur Content of Diesel Fuel

(a) ~~Regulatory Standard~~ Regulatory Standard.

(1) 500 parts per million sulfur standard. On or after October 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. Once the 15 parts per million sulfur content standard becomes applicable to an activity in accordance with the phase-in schedule in subsection (a)(3), the 500 parts per million sulfur content standard shall no longer apply to that activity.

(2) 15 parts per million sulfur standard. Starting June 2006 in accordance with the phase-in schedule in subsection (a)(3), no person shall sell, offer for sale, supply or offer for supply any vehicular diesel fuel having a sulfur content exceeding 15 parts per million by weight.

(3) 2006 phase-in schedule. The 15 parts per million sulfur standard in section (a)(2) shall apply in place of the 500 parts per million sulfur standard in section (a)(1):

(A) Starting June 1, 2006 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 July 15, 2006 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 September 1, 2006 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 purchaser-consumer facility.

(4) Phase-in of 2006 standard at low-throughput facilities. The 15 parts per million sulfur standard in section (a)(2) shall not apply to transactions directly involving the fueling of motor vehicles at a retail outlet or bulk purchaser-consumer facility, where the person selling, offering, or supplying the diesel fuel demonstrates as an affirmative defense that the exceedance of the pertinent standard was caused by diesel fuel delivered to the retail outlet or bulk purchaser-consumer facility prior to July 15, 2006, or delivered to the retail outlet or bulk purchaser-consumer facility directly from a bulk plant prior to September 1, 2006.

[Commentary: The added language is patterned after section 2261(a)(2), which addressed the phase-in of the California Phase 2 reformulated gasoline cap standards at low through-put facilities. The new provision would protect facilities such as farm storage tanks that receive deliveries of diesel fuel so infrequently that no delivery after the upstream phase-in dates has reduced the sulfur content of the facility's diesel fuel.]

~~(4)~~(5) 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 [Insert the date which is 120 days after approval of section 93114, title 17, California Code of Regulations by the Office of Administrative Law] to treat this section 2281 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.

~~(2)~~(5)(6) Subsections (a)(1) and (2) 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.

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(b) ~~Definitions~~ Definitions.

For the purposes of this section:

(0.2) "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.

(0.5) "Bulk plant" means an intermediate diesel fuel distribution facility where delivery of diesel fuel to and from the facility is solely by truck.

(0.8) "California nonvehicular diesel fuel" means any diesel fuel that is not vehicular diesel fuel as and that is sold or made available for use in engines in California.

(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 D975-81, which is incorporated herein by reference, including any mixture of primarily liquid hydrocarbons – organic compounds consisting exclusively of the elements carbon and hydrogen – that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.

[Commentary: Under the modification, a product that is more than 50 percent biodiesel (e.g. B-51) would not fall within the definition of diesel fuel and thus not be subject to the diesel fuel standards.]

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~~(f) Downstream blending of vehicular diesel fuel with other distillates.~~

~~(1) Basic prohibition. No person may combine vehicular diesel fuel that has been supplied from a production or import facility with any other distillate not previously represented as vehicular diesel fuel, unless the person can affirmatively demonstrate that either:~~

~~(A) The other distillate meets the standard in subsection (a)(1) or (a)(2) as applicable; or~~

~~(B) The combined blend meets the standard in subsection (a)(1) or (a)(2) as applicable, and the person combining the other distillate with the vehicular diesel fuel has a prior written authorization from the producer or importer of the vehicular diesel fuel that the two products may be combined; or~~

~~(C) The combined blend will not be marketed as vehicular diesel fuel.~~

~~(2) Exception. Notwithstanding subsection (f)(1), the executive officer may enter into a written protocol with any person to identify conditions under which the person may lawfully blend transmix into vehicular diesel fuel which has been supplied from its production or import facility.~~

~~The executive officer may only enter into such a protocol if he or she reasonably determines that alternatives to the blending are not practical and the blending will not significantly affect the properties of the diesel fuel into which the transmix is added. Any such protocol shall include the person's agreement to be bound by the terms of the protocol.~~

[Commentary: This language was patterned after section 2266.5(h) in the California reformulated gasoline (CaRFG) regulations. Since the CaRFG regulations impose more stringent standards at the refinery or import facility than the "cap" limits that apply throughout the distribution system, it is insufficient to just assure that product added to gasoline downstream of the refinery or import facility meets the cap limits. The downstream blending provisions in the gasoline regulation are necessary to assure that product added to gasoline downstream meets the more stringent refinery/ import facility limits at the point it is added. On further consideration, ARB staff has concluded that since diesel fuel will have to meet the same sulfur standards throughout the distribution system, special downstream provisions need not be included in the sulfur regulation. The 15 parts per million weight sulfur standard that will apply following any blending operations is sufficient to assure adequate enforceability.]

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2. Amend section 2282, title 13, California Code of Regulations, to read as follows:

§ 2282. Aromatic Hydrocarbon Content of Diesel Fuel

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(b) ~~Definitions~~ Definitions.

For the purposes of this section:

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(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 D975-81, which is incorporated herein by reference, including any mixture of primarily liquid hydrocarbons – organic compounds consisting exclusively of the elements carbon and hydrogen – that is sold or represented as suitable for use in an internal combustion, compression-ignition engine.

[Commentary: Under the modification, a product that is more than 50 percent biodiesel (e.g. B-51) would not fall within the definition of diesel fuel and thus not

be subject to the diesel fuel standards.]

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3. Adopt section 2284, title 13, California Code of Regulations, to read as follows:

§ 2284. Lubricity of Diesel Fuel

(a) Regulatory Standard.

(1) Standard starting in 2004

(A) Basic standard. Starting in August 2004 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 ~~(WSD)~~ of 520 microns based on American Society ~~of~~ 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 section 4143, title 4, California Code of Regulations.

[Commentary: The referenced section 4143, title 4, CCR, is a regulation administered by the Division of Measurement Standards in the California Department of Food and Agriculture. It provides:

§4143. Specifications – Diesel Fuel.

Diesel fuel shall meet the specifications set forth by the American Society for Testing and Materials (ASTM) in the latest version of Standard Specification for Diesel Fuel Oils D-975 contained in the ASTM publication entitled: Annual Book of ASTM Standards, Section 5, Volume 05:01, except the sulfur content shall not exceed the maximum specified by any California state law.

Post hearing modifications insert the full title of ASTM test method D6079-02 for clarity and make editorial corrections. The specific adoption date ASTM test method D6079-02 is identified in connection with the proposed new ARB standard; if ASTM updates the method the ARB standard will continue to be

determined by use of ASTM D6079-02 until the ARB amends the regulatory reference. The test method adoption date is not identified in the sunset provision, since any updating of the test method by ASTM would be automatically incorporated by section 4143, title 4, CCR, and it is not the ARB's intent that the effect of the sunset would be suspended whenever ASTM makes any revision to the test method.]

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(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 ~~cause~~ take reasonably prudent precautions to assure that the diesel fuel ~~to satisfy~~ will be brought into compliance with the requirements of subsection (a)(1) before it is sold, supplied or offered from the final distribution facility.

[Commentary: Staff believes that the originally-proposed text did not preclude multiple transfers of upstream unadditized diesel fuel by parties such as fuel brokers or traders before the diesel fuel is brought into compliance by the time it is supplied from the final distribution facility. This post-hearing modification removes any ambiguity and makes clear that such a transaction is permitted, as long as each transferor receives a written statement from the transferee assuring that the diesel fuel will ultimately meet the lubricity requirements prior to the time it is supplied from the final distribution facility.]

7. ~~Amend section 1956.1(b), title 13, California Code of Regulations, to read as follows:~~

§ 1956.1. Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Urban Bus Engines and Vehicles.

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(c) The test procedures for determining compliance with standards applicable to 1985 and subsequent model heavy-duty diesel cycle urban bus engines and vehicles and the requirements for participating in the averaging, banking and trading programs, are set forth in the "California Exhaust

Emission Standards and Test Procedures for 1985 Through 2003 Model Heavy-Duty Diesel Engines and Vehicles," adopted April 8, 1985, as last amended December 12, 2002, the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines," adopted December 12, 2002, ~~as last amended [insert date of amendment]~~, and the "California Interim Certification Procedures for 2004 and Subsequent Model Hybrid-Electric Vehicles, in the Urban Bus and Heavy-Duty Vehicle Classes," adopted October 24, 2002, which are incorporated by reference herein.

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Note: Authority cited: Sections 39600, 39601, 43013, 43018, 43100, 43101, 43104, and 43806, Health and Safety Code and section 28114 Vehicle Code. Reference: Sections 39002, 39003, 39017, 39033, 39500, 39650, 39657, 39667, 39701, 40000, 43000, 43000.5, 43009, 43013, 43018, 43102, 43806, Health and Safety Code, and section 28114 Vehicle Code.

[Commentary: The originally proposed amendments would have allowed 2007 and subsequent model-year heavy-duty engines to be certification tested using a diesel certification test fuel having not only an ultra-low sulfur content as is the case with the federal diesel certification test fuel, but also having a low aromatics content of 8-12 percent by volume reflecting California's low aromatics standard for commercial diesel fuel. This would have been accomplished by amendments to sections 1956.1(c) and 1956.8(b), title 13, California Code of Regulations, and the incorporated "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines." This element of the proposal was in error, and was inconsistent with the previous ARB requirements for diesel certification test fuel for heavy-duty diesel engines. No amendments to the regulation and incorporated test procedure are necessary, since the preexisting California test procedure already specifies an ultra-low sulfur content of 7-15 parts per million for diesel fuel used in certification testing of 2007 and subsequent model-year heavy-duty diesel engines.

With the exception of 1996-1997 urban bus engines, the ARB has never allowed heavy-duty diesel engines to be certification tested with the low-aromatics certification test fuel that is allowed for light-duty diesel vehicles and for medium-duty diesel engines through the 2005 model year. This is because the California heavy-duty engine certification standards have typically been identical to the corresponding federal standards. Since manufacturers are required to produce federal engines that meet the federal standards using a certification test fuel having an aromatics content of at least 27 vol.% unless Type 1-D diesel fuel will be the predominant in-use fuel (40 CFR § 1313-2007(b)(2)), it is inappropriate to allow California engines to certify to an identical California standard using a cleaner certification fuel.]

8. ~~Amend section 1956.8(b), title 13, California Code of Regulations, to read as follows:~~

§ 1956.8. Exhaust Emission Standards and Test Procedures - 1985 and Subsequent Model Heavy-Duty Engines and Vehicles.

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(b) The test procedures for determining compliance with standards applicable to 1985 and subsequent model heavy-duty diesel engines and vehicles and the requirements for participating in the averaging, banking and trading programs, are set forth in the "California Exhaust Emission Standards and Test Procedures for 1985 Through 2003 Model Heavy-Duty Diesel Engines and Vehicles," adopted April 8, 1985, as last amended December 12, 2002, the "California Exhaust Emission Standards and Test Procedures for 2004 and Subsequent Model Heavy-Duty Diesel Engines," adopted December 12, 2002, ~~as last amended [insert date of amendment]~~, and the "California Interim Certification Procedures for 2004 and Subsequent Model Hybrid-Electric Vehicles, in the Urban Bus and Heavy-Duty Vehicle Classes," adopted October 24, 2002, which are incorporated by reference herein.

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NOTE: Authority cited: Sections 39600, 39601, 43013, 43018, 43101, 43104, and 43806, Health and Safety Code, and Vehicle Code section 28114. Reference: Sections 39002, 39003, 43000, 43013, 43018, 43100, 43101, 43101.5, 43102, 43104, 43106, 43204, and 43806, Health and Safety Code.

[Commentary: See the commentary following section 1956.1.]

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