

**EXCERPTS OF PROPOSED REGULATION ORDER WITH MODIFIED TEXT
SHOWING MODIFICATIONS MADE AVAILABLE WITH
SECOND "15-DAY" NOTICE**

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 that were made available by the first "15-day" notice are shown in double underline to indicate additions and ~~double strike-out~~ to indicate deletions. The additional proposed modifications made available by the second "15-day" notice are shown in **bold double underline** to indicate additions and ~~**bold double strikeout**~~ to show deletions. Since the further modifications only affect sections 2284 (lubricity of diesel fuel) and 2285 (exemption for some military fuels), only excerpts from those sections are shown; the symbol "* * * * *" indicates that regulatory text not being further modified is not shown. The italicized, indented commentaries explain the rationale for the proposed modifications to the original proposal released in connection with the first "15-day" notice. Commentaries for the second set of modifications are in ***bold italics***. The commentaries are not part of the regulations. Subsection headings shown in *italics* are to be italicized in Barclays California Code of Regulations.

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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~~ 2005

(A) Basic standard. Starting in ~~August 2004~~ **January 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 (~~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 to 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.

Postponing the implementation date of the first phase of the lubricity standard from August 1, 2004 to January 1, 2005 would align the date with the proposed effective date of the lubricity standard that was recently balloted by ASTM.

The lubricity standard and test method in the ASTM ballot are identical to the proposed ARB standard and test method. While the recent ASTM ballot was not passed, a ballot to vote the objections to be not persuasive is being prepared. Passage of that ballot – scheduled to be completed prior to the ASTM June 2004 meeting – would effectively approve the standard. This is the first ASTM lubricity ballot that has included an effective date.

The modification imposes a five month delay in implementation whether or not the ASTM ballot is successful. If the ASTM standard is not adopted, the ARB lubricity standard goes into effect January 1, 2005, administered by the ARB until an ASTM standard of 520 microns maximum wear scar diameter HFFR becomes enforceable by the Division of Measurement Standards.

Refiners are using the proposed ASTM effective date as their target date for national fuel meeting the lubricity standard. Aligning the ARB

implementation date with the ASTM effective date allows fuel suppliers to coordinate their California and national implementation efforts.]

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(2) ~~2004 2005~~ phase-in schedule. The lubricity standard in section (a)(1) shall apply:

(A) Starting ~~August 1, 2004~~ January 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 ~~September 15, 2004~~ February 15, 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 ~~November 1, 2004~~ April 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.

[Commentary: Postponing the downstream phase-in dates by five months is consistent with the postponement of the initial implementation date.]

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4. Adopt section 2285, title 13, California Code of Regulations, to read as follows:

§ 2285. Exemption From Diesel Fuel Requirements for ~~Diesel~~ Military-Specification Fuels Used in Qualifying Military Vehicles.

(a) Exemption for ~~diesel~~ military-specification fuel used in qualifying military vehicles. The vehicular diesel fuel standards in sections 2281, 2282, and 2284 do not apply to **diesel military specification** fuel that is sold, offered for sale, supplied, offered for supply, stored, dispensed, or transported for use in:

- (1) Vehicles for which the U.S. Environmental Protection Agency has granted a national security exemption under 40 CFR § 85.1708 from motor vehicle emissions standards under 40 CFR Part 86, or which are exempted from regulation under 40 CFR § 85.1703(a)(3) because of features ordinarily associated with military combat or tactical vehicles such as armor and/or weaponry, or military tactical vehicles that are exempt from the California motor

vehicle emission standards pursuant to section 1905, title 13, California Code of Regulations; or

(2) Tactical military motor vehicles that are not subject to a national security exemption from motor vehicle emission standards but for national security purposes (for purposes of readiness for deployment overseas) need to be fueled with the same fuel as motor vehicles for which EPA has granted a national security exemption, provided that such fuel is:

(A) Used only in vehicles identified in section ~~(i)(6)(A)~~ **(a)(1)** or this section ~~(i)(6)(B)~~ **(a)(2)**;

(B) Segregated from non-exempt vehicle diesel fuel at all points in the distribution system; and

(C) Dispensed from a fuel pump stand, ~~fueling truck~~ or tank that is prominently labeled as containing fuel that is not lawful for use in diesel vehicles other than excluded military vehicles, **or from a fueling truck**. Any such fuel pump stand, ~~fueling truck~~ or tank may also be labeled with the appropriate designation of the fuel, such as "JP-8."

[Commentary: The originally proposed text of section 2285 was patterned very closely after the comparable U.S. Environmental Protection Agency (U.S. EPA) regulation, 40 CFR §80.602. The Department of the Navy requested the terminology change in the reference to the fuel covered by the regulation. This change is appropriate since unlike sections 2281, 2282 and 2284, section 2285 does not include its own definition of "diesel fuel." The additional reference to section 1905, title 13, CCR, is appropriate given the fact that that section provides an exemption from the California motor vehicle emission standards for specified military vehicles.

The modification to section 2285(a)(2)(C) exempts fueling trucks from the labeling requirement. The Navy commented that much of the military spec fuels are delivered to remotely located vehicles by military tanker trucks; there is an extremely low likelihood that nonmilitary-spec vehicles would be fueled by these trucks. We have not included the requested modification making the labeling requirements applicable only at dispensing locations where both diesel and military specification fuels are available. Like the U.S. EPA regulation (40 CFR § 80.602(b)(4)), the ARB regulation would apply in both circumstances. We are not persuaded there is only a de minimis possibility that misfueling could occur where only military-spec fuel is being offered. The modifications in section (a)(2)(A) correct erroneous references inadvertently included in the originally proposed text.]

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).