

"HAWAII ADMINISTRATIVE RULES

TITLE 15

DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT AND
TOURISM

CHAPTER 35

ETHANOL CONTENT IN GASOLINE

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Historical Note: The mandate requiring blending of ten per cent ethanol in motor fuel in the State was originally introduced in 1994 through Act 199. The ethanol mandate language in Act 199 became part of chapter 486E, Hawaii Revised Statutes. Chapter 486E was replaced in 1997 by Chapter 486J, Hawaii Revised Statutes. Substantive changes relative to the ethanol blending mandate have been made to incorporate provisions of Act 77, SLH 2002, which amended chapter 486J, Hawaii Revised Statutes, by: 1) requiring the "petroleum commissioner" to refer intentional violations to the attorney general, who may exercise

appropriate legal or equitable remedies available to the State; and 2) changing references to the department and the director of business, economic development, and tourism in the Petroleum Reporting Act to the "petroleum commissioner", who is to be the head of the department's energy, resources, and technology division.

§15-35-1 Purpose. The purpose of this chapter is to provide rules governing implementation of the requirement that gasoline sold in the State for use in motor vehicles contain ten per cent ethanol by volume, as authorized under chapter 486J-10, Hawaii Revised Statutes. [Eff. **OCT 02 2004**] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-2 Definitions. As used in this chapter, unless a different meaning clearly appears in the context:

"Certified" means signed by an authorized company representative and declared to be complete, true, and accurate.

"CIF Honolulu terminal" denotes the quoted sales price of motor fuel, which includes the cost, insurance, excise tax, and freight charges to any terminal in Honolulu, Hawaii.

"Comparable grade" means the grade, based on octane rating, of the finished (blended) fuel.

"Regular" refers to gasoline having an octane rating greater than or equal to 85 and less than 88.

"Midgrade" refers to gasoline having an octane rating greater than or equal to 88 and less than or equal to 90. "Premium" refers to gasoline having an octane rating greater than 90.

"Competitively priced" means fuel-grade ethanol CIF Honolulu terminal for which the wholesale price, minus the value of all applicable federal, state, and county tax credits and exemptions, is not more than the average posted wholesale rack price of unleaded

gasoline of comparable grade, as published by the U.S. Department of Energy, Energy Information Administration in Petroleum Marketing Monthly, Table 31 and available on the Energy Information Administration website, or as otherwise published or posted, as prescribed by the petroleum commissioner.

"Denatured fuel ethanol" means fuel-grade ethanol which meets specification ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasoline for Use as Automotive Spark Ignition Engine Fuel" published by the American Society for Testing and Materials.

"Distributor" means and includes:

- (1) Every person who refines, manufactures, produces, or compounds spark ignition engine fuel in the State, and sells it at wholesale or to retail dealers;
- (2) Every person who imports or causes to be imported into the State or exports or causes to be exported from the State, any spark ignition engine fuel;
- (3) Every person who acquires spark ignition engine fuel through exchanges with another distributor; and
- (4) Every person who acquires spark ignition engine fuel from a licensed distributor as a wholesaler thereof.

"Gasoline" includes conventional, oxygenated, and reformulated gasolines.

"Person" means any person, firm, association, organization, partnership, business trust, limited liability corporation, corporation, or company.

"Person" also includes any city, county, public district or agency, the State or any department or agency thereof, and the United States to the extent authorized by federal law.

"Petroleum commissioner" or "commissioner" is as defined in §486J-1, Hawaii Revised Statutes.

"Retail dealer" means and includes a person who purchases liquid fuel from a licensed distributor, and

sells the liquid fuel at retail. Only sales of gasoline for consumption or used by the purchaser, and not for resale, are sales at retail.

"Ten per cent ethanol by volume" means a blend of gasoline and ethanol which has an ethanol content, exclusive of denaturants and permitted contaminants, that is not less than 9.2 per cent by volume and not more than 10.0 per cent by volume of the blend as determined by an appropriate United States Environmental Protection Agency or American Society of Testing Materials standard method of analysis of alcohol content in motor fuels. [Eff. OCT 02 2004] (Auth: HRS §§ 486J-1 and 486J-10) (Imp: HRS §§ 486J-1 and 486J-10)

§15-35-3 Schedule of ethanol content requirement. Starting no later than eighteen months after the promulgation of this rule, at least eighty-five per cent of all gasoline supplied to a retailer, sold at retail, or sold to a private, state, or municipal fleet for use in motor vehicles, and intended as a final product for fueling motor vehicles in the state of Hawaii, shall contain ten per cent ethanol by volume. [Eff. OCT 02 2004] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-4 Minimum ethanol content requirement. Each distributor supplying fuel to one or more retail stations or to one or more private or municipal fleets shall meet the minimum ethanol content requirement of this chapter on a monthly basis. If a distributor is eligible for quarterly reporting as described in Section 15-37-8, the distributor shall meet the minimum ethanol content requirement on a quarterly basis. [Eff. OCT 02 2004] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-5 Monitoring of ethanol content. Distributors shall permit the petroleum commissioner or authorized agent(s) thereof to inspect the rack

meter loading facilities of the distributor, take samples, and review records during regular business hours to ensure the mandated volume of ethanol is included in gasoline sold by the distributor.

[Eff. **OCT 02 2004**] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-6 Ethanol based additives. (a) Gasoline blended with an ethanol-based product, such as ethyl tertiary butyl ether, shall be considered to be in conformance with this chapter if the quantity of ethanol used in the manufacture of the ethanol-based product represents ten per cent, by volume, of the finished motor fuel.

(b) Ethanol used in the manufacture of ethanol-based gasoline additives, such as ethyl tertiary butyl ether, may be considered to contribute to the distributor's conformance with this section; provided that the total quantity of ethanol used by the distributor is an amount equal to or greater than the amount of ethanol required under this section.

[Eff. **OCT 02 2004**] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-7 Monthly reporting requirements of distributors. (a) Each distributor shall file with the petroleum commissioner monthly in the manner and on forms prescribed, prepared and furnished by the petroleum commissioner, a statement certified by the chief executive officer or other authorized officer of the distributor showing:

- (1) The number of gallons of fuel-grade ethanol purchased by the distributor during the calendar month of the report;
- (2) The price and amount of ethanol available for sale by the distributor during the calendar month of the report;
- (3) The number of gallons of ethanol blended gasoline, by grade, purchased during the calendar month of the report;

- (4) The number of gallons of non-ethanol-blended gasoline purchased by the distributor during the calendar month of the report;
- (5) The number of gallons of ethanol-blended gasoline, by grade, sold by the distributor during the calendar month of the report;
- (6) The number of gallons of non-ethanol-blended gasoline, by grade, sold by the distributor during the calendar month of the report;
- (7) The complete name and address of supplier or suppliers from whom the distributor purchased the ethanol or ten per cent ethanol blended gasoline reported above; and
- (8) Any other information the petroleum commissioner determines from time to time as being required to ensure compliance with chapter 486J-10, Hawaii Revised Statutes.

(b) Individual retail dealers shall not be required to file the monthly report unless they are also a distributor or compound or blend ethanol into gasoline other than at the distributor's terminal loading rack.

(c) The monthly report shall be filed on or before the last day of the calendar month following the month of the report.

(d) In the case of a failure to file a monthly report required under this section on the date and in the manner prescribed herein, or a failure to include any of the information required to be shown on the monthly report filed under this section or to show the correct information, the distributor shall be assessed \$300 for each day during which the failure continues. The maximum penalty under this subparagraph on failures with respect to any one monthly report shall not exceed \$10,000.

(e) Payment of late filing fees imposed pursuant to this section must be made by cash, cashier's check, or certified check made payable to the "State of Hawaii" and delivered to the petroleum commissioner. The name of the distributor for whom payment is made shall be written on the check. [Eff. **OCT 02 2004**]
(Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-8 Opportunity for quarterly reporting by distributors. (a) Upon satisfying the ethanol blending and reporting requirements on a timely basis for at least six consecutive months, the distributor, upon notification by the petroleum commissioner, may elect to file quarterly reports, in lieu of monthly reports.

(b) Quarterly reports shall be filed, in the manner and on forms prescribed, prepared and furnished by the petroleum commissioner, for quarters ending on March 31, June 30, September 30 and December 31.

(c) Reports shall be filed on or before the last day of the calendar month following the last month of the quarterly report.

(d) In the case of a failure to file a quarterly report required under this section on the date and in the manner prescribed therefor, or a failure to include any of the information required to be shown on the quarterly report filed under this section or to show the correct information, the distributor shall be assessed \$300 for each day during which the failure continues. The maximum penalty under this subparagraph on failures with respect to any one quarterly report shall not exceed \$10,000.

(e) Payment of late filing fees imposed pursuant to this section must be made by cash, cashier's check, or certified check made payable to the "State of Hawaii" and delivered to the petroleum commissioner. The name of the distributor for whom payment is made shall be written on the check.

(f) In the case of failure to meet the ethanol blending or quarterly reporting requirements, and upon notification by the petroleum commissioner, distributors previously approved for quarterly reporting may be required to once again file monthly reports, in lieu of quarterly reports, beginning with the calendar month in which notice of such is given by the commissioner. [Eff. **OCT 02 2004**] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-9 Request for an exemption. The petroleum commissioner may authorize the sale of gasoline that does not meet the requirement of ten per cent ethanol if the petroleum commissioner determines that

- (1) Sufficient quantities of competitively-priced ethanol are not available to meet the minimum requirements of this chapter; or
- (2) In the event of any other circumstance for which the petroleum commissioner determines compliance with this chapter would cause undue hardship. [Eff. **OCT 02 2004**]
(Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-10 Process for requesting an exemption.

(a) To obtain an exemption, in whole or in part, from the ethanol blending requirements, a distributor shall submit to the petroleum commissioner, in a manner allowed by the petroleum commissioner, a request for exemption, along with supporting documentation which must demonstrate that--

- (1) Sufficient quantities of competitively-priced ethanol are not available to meet the minimum requirements of this chapter; or
- (2) Compliance with the ethanol blending requirement would cause undue hardship.

(b) Requests for exemption may be submitted at any time and must be accompanied by supporting documentation.

(c) Exemptions may be granted for up to ninety days, and they may be renewed, if supporting documentation is provided.

(d) Exemptions may be granted in whole or in part. When granting an exemption in part, the commissioner may, depending upon the circumstances, completely relieve a distributor from complying with a portion of blending requirements, or the commissioner may require a distributor to blend all or some of the exempted fuel in future months.

- (e) If a distributor is seeking an exemption --
- (1) Under paragraph (a)(1) of this section, the types of documentation that are to accompany the request must include, but are not limited to, actual price and quantity quotes from vendors or suppliers, with contact information (address, phone number, email, and website) of said vendors and suppliers, and additional documentation that exhibits good faith efforts to meet the ethanol blending requirement; or
 - (2) Under paragraph (a)(2) of this section, the distributor must identify what portion of the ethanol blending requirement should be subject to the exemption, describe the specific nature of the hardship that precludes compliance, with documentation, and provide additional documentation that exhibits good faith efforts to meet the ethanol blending requirement.
 - (3) Retroactively, due to sudden and unforeseen circumstances beyond the control of the distributor (such as war, strikes, lockouts, or acts of God), the distributor shall notify the petroleum commissioner, in a manner allowed by the petroleum commissioner, within thirty days of the event, of the distributor's intent to request an exemption, the reason for the exemption request, and the anticipated period of the exemption request. The distributor shall submit a formal request for exemption within 60 days of the event. If the exemption request is subsequently denied, penalties for nonconforming fuel may be assessed.
- (f) Requests for exemption shall be signed and certified by the chief executive officer or other authorized officer of the company and addressed to the Hawaii State Department of Business, Economic

Development and Tourism, Petroleum Commissioner, PO Box 2359, Honolulu Hawaii, 96804, or to such other address as the commissioner may post or announce on the Department website.

(g) The petroleum commissioner shall endeavor to provide to the distributor, within forty-five days of receipt of a request that complies with this section, a written determination as to whether the distributor's request has been granted or denied.

(h) While a request for an exemption is pending and prior to the issuance of a written determination as to whether the distributor's request is granted, no assessment or accrual of penalties shall occur.

[Eff. OCT 02 2004] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-11 Violations. Any person who engages in a practice which does not comply with the requirements of this chapter or exemption issued pursuant thereto shall be in violation of this chapter and shall be subject to enforcement action by the petroleum commissioner. [Eff. OCT 02 2004] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-12 Severability. If any provision of this chapter is held invalid, the invalidity shall not affect the remainder of this chapter and, to this end, the provisions of this chapter are severable. [Eff. OCT 02 2004] (Auth: HRS § 486J-10) (Imp: HRS § 486J-10)

§15-35-13 Referral to attorney general. The petroleum commissioner shall refer any violations of any provision of this chapter to the attorney general, who may exercise appropriate legal or equitable remedies available to the State." [Eff. OCT 02 2004] (Auth: HRS § 486J-9(b)) (Imp: HRS § 486J-9(b))