



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

January 9, 2007

Diesel Fuel Retailers and Distributors:

The United States Environmental Protection Agency has promulgated regulations that require ultra-low sulfur diesel fuel (ULSD) to be sold or dispensed at the vast majority of retail outlets and fleet fueling (wholesale purchaser-consumer) facilities that supply motor vehicle diesel fuel. Refiners are producing about 90 percent of their highway diesel fuel as ULSD, but data from a nationwide survey shows that more than half of retail stations selling diesel fuel currently have pumps without any sulfur label or the pumps are labeled as dispensing low sulfur diesel. This data also shows that 76 percent of the pumps not labeled ULSD were dispensing fuel that met the 15 parts per million (ppm) standard for ULSD, with an average sulfur content of 6.7 ppm. As a result, a significant portion of the ULSD being delivered to retail stations is unavailable for fueling ULSD vehicles only because of product classification or pump labeling problems.

The ULSD regulations require all retailers and wholesale purchaser-consumers to label diesel fuel pumps with specific language notifying persons dispensing diesel fuel into vehicles of the sulfur standard of the fuel, and the vehicles for which it is appropriate. With certain exceptions, retailers and wholesale purchaser-consumers also are required to sell or dispense diesel fuel they receive as ULSD from a pump labeled as dispensing ULSD, and ULSD a distributor receives from a terminal must be classified as ULSD when it is transferred to a retailer or wholesale purchaser-consumer.

Retailers, wholesale purchaser-consumers and distributors that fail to comply with the diesel pump labeling and ULSD sales and transfer requirements are subject to penalties under the Clean Air Act. The two enclosed Fact Sheets describe these requirements, and explain the potential consequences of failing to comply with these important regulations.

Sincerely,

A handwritten signature in blue ink, appearing to read "Adam M. Kushner".

Adam M. Kushner, Director
Air Enforcement Division



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Diesel Pump Labeling Requirements

-Fact Sheet-

The U.S. Environmental Protection Agency has promulgated new regulations that require all retailers and operators of fleet fueling facilities (wholesale purchaser-consumers) to label diesel fuel pumps with specific language notifying persons dispensing diesel fuel into vehicles of the sulfur standard of the fuel, and the vehicles for which it is appropriate. With certain exceptions, retailers and wholesale purchaser-consumers also are required to sell or dispense diesel fuel they receive as ultra-low sulfur diesel fuel (ULSD) from a pump labeled as dispensing ULSD, and ULSD a distributor receives from a terminal must be classified as ULSD when it is transferred to a retailer or wholesale purchaser-consumer.

Retailers, wholesale purchaser-consumers and distributors that fail to comply with these pump labeling and ULSD sales and transfer requirements are subject to penalties under the Clean Air Act.

This Fact Sheet describes the diesel pump labeling and ULSD use requirements and explains the potential consequences of failing to comply with these important regulations.

The Ultra-Low Sulfur Diesel Regulations

The ULSD program is the U.S. Environmental Protection Agency's (EPA) most ambitious strategy to date to reduce emissions from diesel vehicles. This program pairs engine technology and fuel changes to significantly reduce diesel vehicle pollution. Under this program, new diesel engines will be equipped with sulfur-sensitive emissions control technologies that will require diesel fuel with significantly reduced sulfur levels to function properly. Where inappropriate fuels are used in diesel engines, the emissions of harmful gases can increase significantly and the emission control equipment can be permanently damaged.

(Revision 1 – December 14, 2006)

To prevent the misfueling of vehicles equipped with sulfur-sensitive emissions control equipment, the ULSD Regulations require that all diesel fuel pumps must be labeled using the pump labeling language set forth at 40 C.F.R. § 80.570. These pump labeling requirements, which became effective June 1, 2006, are designed to inform the user of the category of diesel fuel they are dispensing into their vehicle.

Retailer and Wholesale Purchaser-Consumer Responsibilities

Beginning June 1, 2006, all retailers and wholesale purchaser-consumers are required to affix a label to each diesel pump stand to identify the type of diesel fuel being dispensed. There are three type of diesel fuel that may be sold or dispensed by retailers and wholesale purchaser-consumers: 1) ultra low sulfur diesel fuel, which is required to meet the 15 parts per million (ppm) sulfur standard (ULSD fuel); 2) low sulfur diesel fuel, which is subject to the 500 ppm sulfur standard (LSD fuel); and 3) Non-Highway Diesel Fuel, which may exceed 500 ppm sulfur, but may not be used in motor vehicles.

The diesel pump labels must be affixed in a conspicuous manner and be printed in a color that contrasts with the background. The titles of all labels must be in 24-point type, the sulfur level cap designation may be in 20-point type, and all other required language may be in 14-point type.¹

Examples of the diesel pump labels are included at the end of this Fact Sheet. (Note that these examples are for illustration only, and do not meet these print size requirements.) In addition, copies of labels that comply with the diesel pump labeling requirements, and additional information on the ULSD program and requirements can be found at www.clean-diesel.org and www.epa.gov/cleandiesel/comphelp.htm

20% Downgrade Limit for Retailers, Wholesale Purchaser-Consumers and Distributors

The ULSD Regulations limit the volume of ULSD fuel that a retailer or wholesale purchaser-consumer may sell or dispense from a LSD fuel pump, and the amount of ULSD a distributor may distribute as LSD. A “downgrade” occurs when a retailer or wholesale purchaser-consumer receives diesel fuel represented by the distributor as being ULSD, but dispenses this fuel from a pump that is labeled for LSD fuel. A distributor “downgrades” when ULSD obtained from a terminal is classified as LSD when delivered to a retail outlet. In general, the ULSD Regulations limit the amount of ULSD fuel that can be downgraded to 20% during any compliance period. Downgrading of ULSD to LSD is allowed so that retailers, wholesale purchaser-consumers and distributors can continue to sell, dispense or distribute diesel fuel if the supply of ULSD becomes

¹On June 1, 2010, the pump labeling requirements change for highway diesel fuel (*see*, 40 C.F.R. §§ 80.572 - 80.574).

contaminated. However, the regulations limit the amount of ULSD that can be downgraded to assure there is sufficient ULSD fuel available in the marketplace.²

The first downgrading compliance period began on October 15, 2006, and ends on May 31, 2007. The first 20% of this compliance period ended on December 1, 2006. Thus, a retailer or distributor that has been downgrading ULSD since October 15th is at risk of violating the 20% downgrading limit depending on day-to-day sales volume. A retailer in this situation should immediately begin dispensing all ULSD received from a fuel pump labeled as dispensing ULSD, unless the diesel fuel does not meet ULSD standards. Similarly, a distributor in this situation should immediately ensure that all ULSD received from a terminal is classified as ULSD on the product transfer documents provided by the distributor to the retailer, unless the diesel fuel does not meet ULSD standards.

Preliminary Information Regarding Non-Compliance with Pump Labeling Requirements

EPA has determined that a large number of diesel pumps are either not labeled or are labeled as LSD fuel pumps. To ensure that new vehicles with sulfur-sensitive equipment can obtain ULSD fuel and prevent violations of the ULSD Regulations, retailers and wholesale purchaser-consumers should immediately take steps to make sure that their diesel pumps are properly labeled and that they will not violate the downgrade limits by selling an excessive volume of ULSD fuel from diesel pumps with LSD fuel labels.

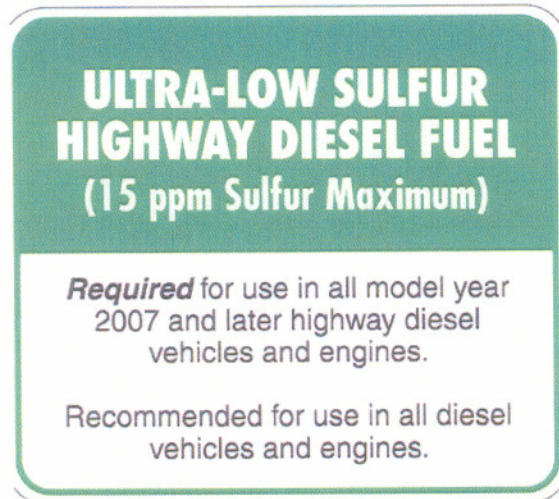
Enforcement Process When A Pump Labeling Violation is Found

When EPA determines that a retailer or wholesale purchaser-consumer has violated the diesel pump labeling or downgrading limits, the Agency may commence an enforcement action, including the collection of a civil penalty, against the person who owns, leases, operates, controls or supervises the facility where the violation was found. EPA may assess a civil penalty of up to \$32,500 per day for each labeling or downgrading violation, plus the economic benefit or savings resulting from the violations.

² Retailers or wholesale purchaser-consumers who continuously sell or dispense only ULSD from a properly labeled ULSD fuel pump throughout the compliance period are exempt from the 20% downgrade restriction.

Examples of Diesel Pump Labels

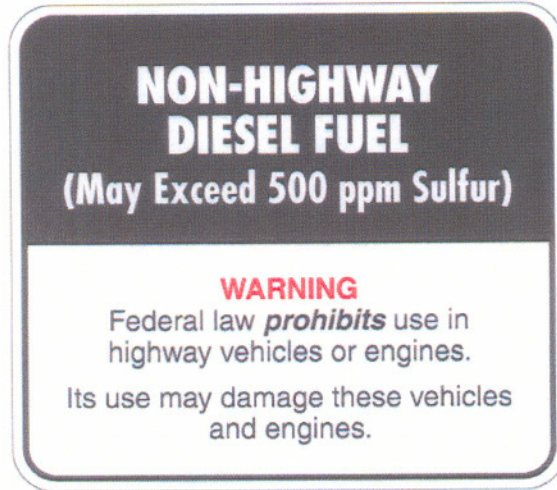
ULSD Pumps: Label required for pumps used to dispense ultra low sulfur diesel fuel (ULSD) (diesel fuel subject to the 15 parts per million (ppm) sulfur standard):



LSD Pumps: Label required for pumps used to dispense low sulfur diesel fuel (LSD) (diesel fuel subject to the 500 ppm sulfur standard):



Non-Highway Diesel Fuel Pumps: Label required for pumps used to dispense diesel fuel for use in non-motor vehicle equipment:





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Ultra-Low Sulfur Diesel Fuel Labeling and Downgrading

-Fact Sheet-

The transition to Ultra-Low Sulfur Diesel fuel (ULSD) at retail outlets and fleet fueling (wholesale purchaser-consumer) facilities is proceeding. In December 2006, refiners are producing about 90 percent of their highway diesel fuel as ULSD, yet fewer than half of retail stations selling diesel fuel currently have pumps labeled as dispensing ULSD.

With certain limited exceptions, ULSD a distributor receives from a terminal must continue to be designated as ULSD when it is transferred to a retailer or wholesale purchaser-consumer, and a retailer or wholesale purchaser-consumer is required to sell or dispense diesel fuel they receive as ULSD from a pump labeled as dispensing ULSD.

Distributors, retailers and wholesale purchaser-consumers that fail to comply with the ULSD are subject to penalties under the Clean Air Act.

This Fact Sheet describes the requirements to transfer, and sell or dispense ULSD, and explains the potential consequences of failing to comply with these important regulations.

The Clean Highway Diesel Program

The clean highway diesel program is the U.S. Environmental Protection Agency's (EPA) most ambitious strategy to date to reduce emissions from diesel vehicles. This program pairs engine technology and fuel changes to significantly reduce diesel vehicle pollution. Under this program, new diesel engines (model year 2007 and later) will be equipped with sulfur-sensitive emissions control technologies that will require diesel fuel with significantly reduced sulfur levels to function properly. The maximum sulfur content of ULSD is 15 parts per million (ppm), in order for it to be compatible with these new diesel engines. Where inappropriate fuels are used in diesel engines, the

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emissions of harmful gases can increase significantly and the emission control equipment can be permanently damaged.

Refiners are Producing ULSD, But a Significant Portion is Not Reaching the Market

Beginning on June 1, 2006, a minimum of 80 percent of the highway diesel fuel produced by a refiner or imported by an importer must be ULSD. In December 2006, about 90 percent of the highway diesel fuel produced since June 2006 has been ULSD, which more that meets the requirement to produce ULSD. In addition, data as of December 2006 from a nationwide survey of ULSD being sold at retail stations since October 15, 2006 shows an average sulfur content of 5.8 ppm for the 98 percent of stations that meet the 15 ppm ULSD sulfur standard. It is apparent that refiners, importers, pipelines, terminals and trucking companies have been very successful in producing and bringing to market diesel fuel that meets the 15 ppm ULSD sulfur standard.

However, survey data shows that as of December 2006, fewer than half of the retail stations that sell diesel fuel have pumps labeled as ULSD. This missing ULSD is being sold from pumps that are labeled LSD after having been reclassified as LSD by the distributor or retailer, or the ULSD is being sold from pumps that are not labeled at all to identify the category of diesel fuel being dispensed.

Reclassification of ULSD as LSD can be a violation of the ULSD regulations, as discussed below. In addition, selling or dispensing diesel fuel from an unlabeled pump always is a violation of the ULSD regulations.

Requirement to Transfer and Sell or Dispense ULSD

The ULSD regulations generally require that ULSD transferred in the distribution system must maintain the ULSD classification. There is a limited opportunity to reclassify ULSD as LSD, called "downgrading" of ULSD, if, for example, the ULSD becomes contaminated. This downgrading option is limited to 20 percent of the ULSD volume received by a distributor, retailer or wholesale purchaser-consumer.¹ However, as described above, survey data indicates that significantly more than 20 percent of the ULSD being produced is being downgraded. This could result in penalties for the distributors, wholesale purchaser-consumers or retailers that violate the 20 percent downgrade limitation.

Incomplete or Confusing Product Transfer Documents Can Cause Downgrading

The ULSD regulations require that each transfer of ULSD be accompanied by documents (product transfer documents) that identify the product being transferred as ULSD. This applies to transfers from a terminal to a truck distributor, and transfers from the truck distributor to a retailer or

¹ The first averaging period for the downgrading limitation is October 15, 2006, through May 31, 2007.

wholesale purchaser-consumer. However, information obtained by EPA shows old or confusing product transfer documents are causing unintended downgrades of ULSD.

For example, some product transfer documents identify the product as being both ULSD and LSD, which would cause confusion about which product is being transferred. Another example is a truck distributor using old pre-printed product transfer documents that do not include a category for ULSD, so that all diesel fuel is classified as LSD even when ULSD was obtained at the terminal. In both of these examples, if the distributor is downgrading ULSD to LSD, it must keep track of these downgrades to make sure that it does not violate its 20 percent limitation on downgrading.

Terminal operators should immediately ensure their product transfer documents clearly and unambiguously identify ULSD they distribute. Truck distributors should immediately ensure that all ULSD received from a terminal is clearly identified as ULSD on the product transfer documents provided to the retailer, unless the diesel fuel does not meet ULSD standards.

Retailer Pump Labeling Can Cause Downgrading

Current survey data shows that about 40 percent of retail diesel pumps are labeled as dispensing LSD, even though the diesel fuel being dispensed from most of these pumps meets the ULSD sulfur standard. A retailer downgrades ULSD if it receives diesel fuel identified in product transfer documents as ULSD and sells this fuel from a pump labeled as dispensing LSD. Such a retailer risks violating the 20 percent limitation on downgrading.

Enforcement of Violations of the ULSD Transfer and Sales Requirements

When EPA determines that a distributor, retailer or wholesale purchaser-consumer has violated the diesel requirements in any way (e.g., exceeded its 20 percent downgrading allowance), the Agency may commence an enforcement action. EPA may require a regulated party to supply documents that demonstrate the volume of ULSD the party has downgraded to determine compliance with the 20 percent downgrading limitation. EPA may assess a civil penalty of up to \$32,500 per day if a distributor, retailer or wholesale purchaser-consumer downgraded more than 20 percent of the ULSD it received.

Information on the ULSD program and requirements can be found at www.clean-diesel.org and www.epa.gov/cleandiesel/comphelp.htm