

**State of California  
Office of Administrative Law**

In re:

State Water Resources Control Board

Regulatory Action:

Title 23, California Code of Regulations

Adopt sections: 2631.2

Amend sections:

Repeal sections:

NOTICE OF APPROVAL OF EMERGENCY  
REGULATORY ACTION

Government Code Section 11349.6

OAL File No. 2009-0521-02 E

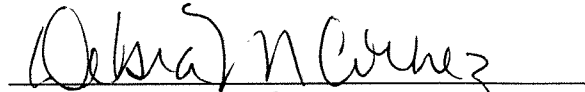
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This emergency regulatory action allows for the lawful storage of certain biodiesel blends up to 20% biodiesel, 80% petroleum diesel, commonly known as B20, in underground storage tanks (USTs) that have been tested and approved for storing petroleum diesel, if specified conditions are met.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 6/1/2009 and will expire on 12/1/2009. The Certificate of Compliance for this action is due no later than 11/30/2009.

Date: 6/1/2009

  
Debra M. Cornez  
Assistant Chief Counsel

For: SUSAN LAPSLEY  
Director

Original: Dorothy Rice  
Copy: Lori Brock

**EMERGENCY REGULATIONS SUBMISSION**

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

<b>OAL FILE NUMBERS</b>	<b>NOTICE FILE NUMBER</b> Z-	<b>REGULATORY ACTION NUMBER</b>	<b>EMERGENCY NUMBER</b> 2009-0521-02E
For use by Office of Administrative Law (OAL) only			
NOTICE		REGULATIONS	

ENDORSED FILED IN THE OFFICE OF  
2009 JUN -1 PM 4:22  
*Debra Bowen*  
DEBRA BOWEN  
SECRETARY OF STATE

<b>AGENCY WITH RULEMAKING AUTHORITY</b> State Water Resources Control Board	<b>AGENCY FILE NUMBER (if any)</b>
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**A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)**

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
<b>OAL USE ONLY</b>	<b>ACTION ON PROPOSED NOTICE</b> <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE

**B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)**

1a. SUBJECT OF REGULATION(S) Storage of biodiesel blends in underground storage tanks	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)	
<b>ACTION(S) AFFECTED</b> (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT 2631.2
	AMEND
TITLE(S) 23	REPEAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346)	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute.	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h))	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> File & Print	<input type="checkbox"/> Print Only
<input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Other (Specify) _____	

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)
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5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)			
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input checked="" type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> \$100 Changes Without Regulatory Effect	<input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify) _____			

7. CONTACT PERSON Lori Brock, Senior Staff Counsel	TELEPHONE NUMBER (916) 341-5185	FAX NUMBER (Optional) (916) 341-5199	E-MAIL ADDRESS (Optional) Lbrock@waterboards.ca.gov
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>Dorothy Rice</i>	DATE 5.15.09
TYPED NAME AND TITLE OF SIGNATORY Dorothy Rice, Executive Director - State Water Resources Control Board	

For use by Office of Administrative Law (OAL) only

ENDORSED APPROVED

JUN 01 2009

Office of Administrative Law

Adopt Section 2631.2 – Biodiesel Blends – Variance from material compatibility certification requirements

(a) This section provides for a temporary variance from certain provisions of sections 2631, 2631.1 and 2643, which will allow owners to store biodiesel blends up to 20 percent biodiesel (B20) by volume in underground storage tanks before testing by an independent testing organization has been completed.

(b) Biodiesel means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, that meets the requirements of the American Society for Testing and Materials Standard Specification D-6751, and the registration requirements of the United States Environmental Protection Agency as a fuel and as a fuel additive under the Clean Air Act (42 U.S.C. Sec. 7401).

(c) Biodiesel blend means a fuel that contains one percent to 99.99 percent biodiesel blended with diesel fuel.

(d) For purposes of this section, where a biodiesel blend is designated BX, X represents the percentage of the fuel, by volume, that is biodiesel. For example, B20 means a biodiesel blend that contains 20 percent, by volume, of biodiesel.

(e) For an underground storage tank storing biodiesel blends greater than B5 and up to and including B20, a variance from the approval requirements contained in section 2631, subdivision (b) and section 2631.1, subdivision (b) shall be provided by the local agency if all of the following requirements are satisfied:

- (1) The underground storage tank meets the construction requirements contained in Health and Safety Code section 25291, subdivision (a), paragraphs (1) – (6), inclusive and subdivisions (b) – (i), inclusive, section 25290.1 or section 25290.2, as applicable.
- (2) The underground storage tank and components are approved for the storage of petroleum diesel pursuant to section 2631, subdivision (b).
- (3) The underground storage tank satisfies and the owner or operator complies with all other applicable requirements contained in Chapter 6.7 of the Health and Safety Code, the regulations adopted to implement that chapter, and operational requirements contained in a permit issued pursuant to Section 25284 of the Health and Safety Code.
- (4) The owner provides both of the following to the local agency:
  - (A) A Notice of Intent, signed by the owner, to store a biodiesel blend greater than B5 and up to and including B20 in the underground storage tank pursuant to the variance established in this section.

(B) An "Operating Permit Application – Tank Information" form contained in Title 27, Division 3, Subdivision 1, Chapter 6 that identifies the biodiesel blend accompanied by a written statement from the owner that the underground storage tank and components are compatible with the biodiesel blend stored or to be stored. This statement shall be supported by documentation from the underground storage tank manufacturer, a nationally-recognized biodiesel association, or a nationally-recognized research organization with applicable expertise.

(f) For an underground storage tank system storing biodiesel blends up to and including B20, a variance from the certification requirements of section 2643, subdivision (f) shall be provided by the local agency if all of the following requirements are satisfied:

(1) The release detection method otherwise meets the requirements contained in section 2643 for the biodiesel blend stored.

(2) The owner provides both of the following to the local agency:

(A) A Notice of Intent, signed by the owner, to utilize release detection method or equipment pursuant to the variance established in this section.

(B) A written statement by the owner that the release detection method or equipment functions with the biodiesel blend stored or to be stored. This statement shall be supported by documentation from the manufacturer of the release detection method or equipment.

(3) The underground storage tank meets the requirements contained in paragraphs (1) to (3), inclusive, of subdivision (e).

(g) The variance established in subdivision (e) shall become inoperative on the following date, whichever date is sooner:

(1) Ninety days after the date of any decision by the applicable certification organization that determines that the certification for underground storage tanks that contain the biodiesel blend stored are included in the standard petroleum diesel approval or that determines that materials or components of the underground storage tank for which the variance was obtained are not compatible with the biodiesel blend stored.

(2) Thirty-six (36) months from the effective date of this section.

(h) The variance contained in subdivision (f) shall become inoperative thirty-six (36) months from the effective date of this section.

(i) If the variance established under subdivision (e) becomes inoperative pursuant to paragraph (2) of subdivision (g) or because the applicable certification organization determines that materials or components of the underground storage tank for which the variance was obtained are not compatible with the biodiesel blend stored, the owner

shall empty the underground storage tank and the local agency shall inspect the underground storage tank pursuant to Health and Safety Code section 25288 before any other substance is stored.

**Authority and Reference:**

Authority citations: Section 25299.3, Health and Safety Code.

Reference citations: Sections 25281, 25286, 25290.1, 25290.2, 25291, and 25404.1 Health and Safety Code.