

STATEMENTS OF POLICY

Title 7—AGRICULTURE

DEPARTMENT OF AGRICULTURE

Biofuel Development and In-State Production Incentive Act's Biodiesel Content Requirements

Scope

This statement of policy applies to persons who sell or offer for sale in this Commonwealth diesel fuel for use by ultimate consumers in on-road compression ignition engines subsequent to May 1, 2010.

Purpose

The purpose of this statement of policy is to provide direction with regard to compliance with Act 78 of 2008, known as the Biofuel Development and In-State Production Incentive Act (73 P. S. §§ 1650.1—1650.7) (act) to persons who sell or offer for sale in this Commonwealth diesel fuel for use by ultimate consumers in on-road compression ignition engines subsequent to May 1, 2010.

Discussion

On October 10, 2009, notice was published in the *Pennsylvania Bulletin*, at 39 Pa.B. 5930, that the biodiesel content requirement of section 3(a)(1) of the act (73 P. S. § 1650.3(a)(1)) shall be enforced by the Department of Agriculture (Department) effective May 1, 2010. The statutory actions prerequisite to the biodiesel content requirements of section 3(a)(1) of the act becoming effective had been met prior to the publication of the notice of October 10, 2009. The biodiesel content requirements are as follows:

All diesel fuel sold or offered for sale in this Commonwealth for use by ultimate consumers in on-road compression ignition engines shall be at least 2% biodiesel by volume effective May 1, 2010.

Section 5(a) of the act (73 P. S. § 1650.5(a)) provides that the Department shall ensure compliance with the act.

For the Department to plan for agency operations and administration of its duties to ensure compliance with the act, and to establish important policies to be utilized in the future exercise of the Department's administrative

discretion with regard to ensuring compliance with the act, the Department establishes the following policies:

1. On and after May 1, 2010, all terminals, wholesalers and distributors selling diesel fuel in this Commonwealth to retailers for resale to consumers in this Commonwealth for use in on-road compression ignition engines shall be considered by the Department to be in compliance with section 3(a)(1) of the act if they are selling diesel fuel which is at least 2% biodiesel by volume.

2. On and after May 1, 2010, retailers selling diesel fuel in this Commonwealth to consumers for use in on-road compression ignition engines will not be considered to be in violation of section 3(a)(1) of the act with regard to the sale of diesel fuel which is not at least 2% biodiesel by volume until: (a) delivery of a volume of diesel fuel sufficient to fill that location's onsite storage capacity at least once has been made subsequent to May 1, 2010, and; (b) proof of all deliveries 90 days prior to, and 90 days subsequent to, May 1, 2010, are provided to Department employees upon request and inspection, or both. Additional fuel delivery documentation may be requested by Department employees in particular instances.

The intent of this policy is to enable retailers taking delivery of diesel fuel prior to May 1, 2010, to continue to sell that diesel fuel from the location of the delivery without being found out of compliance with the act and without the costly necessity to empty storage tanks and dispose of previously-delivered diesel fuel.

This policy is necessary to allow for the orderly enforcement of the biodiesel content requirements of section 3(a)(1) of the act effective May 1, 2010.

Effective Date

This statement of policy is effective May 1, 2010.

Contact Person

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