

SUBPART 225-3

FUEL COMPOSITION AND USE—GASOLINE

(Statutory authority: Environmental Conservation Law, §§ 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305)

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Historical Note

Subpart (§§ 225-3.1—225-3.5) filed Dec. 6, 1988; amds. filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993 eff. 30 days after filing; Aug. 10, 1993 as emergency measure eff. Aug. 10, 1993. Amended Subpart title.

§ 225-3.1 Applicability.

This Subpart applies throughout the State of New York except that the provisions in section 225-3.3(c) of this Subpart applies only throughout the New York City CMSA as defined by section 225-3.2(b)(3)(i) of this Subpart.

Historical Note

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§ 225-3.2 Definitions.

- (a) For the purpose of this Subpart, the general definitions of Part 200 of this Title apply.
- (b) For the purpose of this Subpart, the following definitions also apply:
 - (1) *ASTM*. American Society for Testing and Materials.
 - (2) *Carbon monoxide (CO)*. A colorless, odorless, tasteless gas at standard conditions having a molecular composition of one carbon atom and one oxygen atom.
 - (3) *Carbon monoxide control area (control area)*. ¹(i) The Consolidated Metropolitan Statistical Area (CMSA) in which a carbon monoxide nonattainment area is located; or
 - (ii) if the area is not located in a CMSA, the Metropolitan Statistical Area (MSA) in which the area is located; or
 - (iii) if an area which was designated as nonattainment is redesignated as attainment for carbon monoxide, that CMSA or MSA as long as is necessary to maintain such standard in that area. The following shall be considered to be carbon monoxide control areas:
 - (a) New York City Consolidated Metropolitan Statistical Area (New York City CMSA). This area consists of the counties of Bronx, Kings, Queens, New York, Richmond, Orange, Rockland, Putnam, Westchester, Nassau and Suffolk.
 - (b) Syracuse Metropolitan Statistical Area (Syracuse MSA). This area consists of the counties of Onondaga, Oswego and Madison.
 - (4) *Conforming gasoline*. Any gasoline which conforms with the requirements of section 225-3.3 of this Subpart.

(5) *Distributor*. Any person who transports or stores or causes the transportation or storage of gasoline at any point between a refinery or importer's facility and a retail outlet or wholesale purchaser-consumer's facility.

(6) *Ethanol blending plant*. Any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner.

(7) *Final distribution facility*. The stationary facility of a distributor from which gasoline is supplied to a retail outlet or wholesale purchaser-consumer's facility.

(8) *Gasoline*. A volatile liquid mixture containing hydrocarbons or a blend of this mixture with one or more oxygen containing ashless organic compounds, such as alcohols or ethers, which is suitable for use in motor vehicles with spark-ignition, internal combustion engines and which is commonly or commercially known or sold as gasoline.

(9) *Gasoline bulk plant (bulk plant)*. A gasoline storage and distribution facility with an average daily throughput of 40,000 gallons of gasoline or less.

(10) *Gasoline loading terminal (terminal)*. A gasoline storage and distribution facility with an average daily throughput greater than 40,000 gallons of gasoline or with an emission rate potential of volatile organic compounds of 100 tons per year or greater.

(11) *Nonconforming gasoline*. Any gasoline which does not conform with the requirements of section 225-3.3 of this Subpart.

(12) *Numeric allowance*. The maximum margin of error in vehicle miles traveled allowed by the United States Environmental Protection Agency pursuant to 42 U.S.C. section 7512a(a)(2)(A). (See Table 1, section 200.9 of this Title). (*Note*: As of November 15, 1992, the numeric allowance is five percent for calendar year 1993, four percent for 1994, and three percent for 1995 and subsequent years.)

(13) *Refiner*. Any person who owns, leases, operates, controls, or supervises a refinery.

(14) *Refinery*. Any facility, including an ethanol blending plant, which produces gasoline.

(15) *Reid vapor pressure (RVP)*. A measure of the vapor pressure of a gasoline in pounds per square inch absolute at 100°F.

(16) *Reseller*. Any person who purchases gasoline and resells or transfers it to a retailer or a wholesale purchaser-consumer.

(17) *Retail outlet*. Any establishment at which gasoline is sold or offered for sale to the general public for use in motor vehicles.

(18) *Retailer*. Any person who owns, leases, operates, controls or supervises a retail outlet.

(19) *Ultimate consumer*. The first person who purchases or obtains gasoline for use in motor vehicles.

(20) *VMT tracking area*. The area in which the vehicle miles traveled (VMT) must be monitored or tracked in accordance with 42 U.S.C. section 7512a(a)(2)(A). (see Table 1, section 200.9 of this Title).

(21) *Wholesale purchaser-consumer*. Any ultimate consumer of gasoline who purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank, substantially under the control of that person, of at least 550-gallon capacity.

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§ 225-3.3 Prohibitions and requirements—volatility.

(a) No person shall sell or supply a gasoline to a retailer or wholesale purchaser-consumer, having a Reid vapor pressure greater than 9.0 pounds per square inch (psi) as sampled and tested by methods acceptable to the commissioner, during the period May 1st through September 15th of each year beginning 1989.

(b) Any person who sells or supplies gasoline, subject to subdivision (a) of this section, to retailers or wholesale purchaser-consumers must comply with the requirements of section 225-3.4 of this Subpart which pertain to gasoline RVP.

(c) *Carbon monoxide contingency measure.* (1) A contingency measure, pursuant to 42 U.S.C. section 7502(c)(9) (see Table 1, section 200.9 of this Title) and 42 U.S.C. section 7512a(a)(3) (see Table 1, section 200.9 of this Title), shall be invoked to limit the maximum allowable wintertime RVP of gasoline sold, supplied, or dispensed in the New York City CMSA after the first quality assured violation of the National Ambient Air Quality Standard (NAAQS) for carbon monoxide at any New York State operated monitor within the New York City CMSA or if either of the following occur:

(i) if the annual estimate of actual vehicle miles traveled (VMT), pursuant to 42 U.S.C. section 7512a(a)(2)(A) (see Table 1, section 200.9 of this Title), in the VMT tracking area within the New York City CMSA during the previous calendar year exceeds the numeric allowance incorporated in the most recent forecast of VMT made prior to that calendar year; or

(ii) if an annual updated forecast of VMT, pursuant to 42 U.S.C. section 7512a(a)(2)(A) (see Table 1, section 200.9 of this Title), in the VMT tracking area within the New York City CMSA for subsequent calendar years exceeds the numeric allowance incorporated in the most recent prior forecast of VMT.

(2) Under such a carbon monoxide contingency measure, the following maximum RVP limits of gasoline sold, supplied, or dispensed in the New York City CMSA shall apply:

(i) 13.5 psi during the period November 1st through the last day of February of each year;

(ii) 9.0 psi during the period May 1st through September 15th of each year (the summer-time gasoline volatility provisions of subdivisions [a] and [b] of this section are unaffected by the carbon monoxide contingency measure established in this subdivision).

(3) Prior to its implementation, the carbon monoxide contingency measure, as established in this subdivision, shall be preceded by the following administrative actions:

(i) the administrator of the United States Environmental Protection Agency, or his or her designee, must find that at least one of the conditions in paragraph (1) of this subdivision has occurred; and

(ii) the commissioner must provide notice in the *New York State Register*, within 60 days of a finding as referred to in subparagraph (i) of this paragraph that the contingency measure will be invoked.

(4) The carbon monoxide contingency measure, as established in this subdivision, shall take effect within 12 months from the date of a finding, as referred to in subparagraph (i) of this paragraph.

Historical Note

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§ 225-3.4

TITLE 6 ENVIRONMENTAL CONSERVATION

§ 225-3.4 Records and reports.

(a) The owner or operator of any refinery, terminal, or bulk plant from which gasoline, subject to this Subpart, is distributed must maintain records on the gasoline that is delivered to or distributed from such facilities. These records shall include:

- (1) The RVP of the gasoline if subject to section 225-3.3 of this Subpart.
- (2) A designation of the appropriate time period(s) in which the gasoline is intended to be dispensed to motor vehicles.
- (3) Written certification that the gasoline:
 - (i) conforms with all RVP requirements of this Subpart; and
 - (ii) is in compliance with all applicable State and Federal regulations which apply during the time period(s) specified pursuant to paragraph (3) of this subdivision.

(b) Persons subject to subdivision (a) of this section shall provide the following records with gasoline which is distributed from facilities:

- (1) A copy of the certification produced for paragraph (a)(5) of this section.
- (2) Documentation of the maximum RVP of the gasoline if the gasoline was subject to section 225-3.3 of this Subpart.
- (3) Designation of the appropriate time period(s) in which the gasoline is intended to be dispensed to motor vehicles.
- (4) Documentation of the shipment quantity and the shipment date of the gasoline being distributed.

(c) Each retailer or wholesale purchaser-consumer shall maintain records on each delivery of gasoline. These records shall include all those required to be delivered pursuant to subdivision (b) of this section.

(d) Persons required to maintain records pursuant to subdivisions (a), (b) and (c) of this section must make the records available for inspection during normal business hours, at the location from which the gasoline was delivered, sold, or dispensed, to the commissioner or his or her representative and must furnish copies of these records to the commissioner or his or her representative upon request. Such persons shall maintain all records and documentation required to be made or maintained in accordance with this section, including any calculations performed, for at least two years from date of delivery.

Historical Note

Sec. filed Dec. 6, 1988; renum. 225-3.6, new filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993; Aug. 10, 1993 as emergency measure, expired Sept. 3, 1993; repealed, new added by renum. and amd. 225-3.6, filed Oct. 5, 2001 eff. 30 days after filing.

§ 225-3.5 Exceptions and variances — volatility.

(a) Upon application, the commissioner may grant an exception from the requirements of section 225-3.3(a) of this Subpart to a supplier of a gasoline which contains simple alcohols upon a showing that gasoline and gasoline blending components are not reasonably available that, when blended, would enable the resulting fuel to meet the requirements of section 225-3.3(a) of this Subpart, and that granting the exception will not significantly exacerbate ambient ozone levels. Such an exception may be issued for all or a part of the State for up to one year, and may be renewed upon application. The commissioner shall place conditions on exceptions granted pursuant to this subdivision including a maximum RVP allowed and the quantity of gasoline permitted to be supplied under the exception.

(b) Effective September 16, 1989, upon application, the commissioner, after consultation with the President of the New York State Energy Research and Development Authority, may grant a temporary variance from the requirements of section 225-3.3 of this Subpart if the applicant for such an exception can demonstrate to the commissioner that quantities of gasoline

sufficient to meet the demand in New York State cannot be manufactured in time to meet all the requirements of section 225-3.3 of this Subpart.

(1) The President of the New York State Energy Research and Development Authority, must certify that there exists an insufficient supply of fuel which conforms to the standards in section 225-3.3 of this Subpart before a temporary variance may be granted under this subdivision.

(2) The commissioner shall impose an interim volatility standard and/or restrictions on the quantity of gasoline permitted to be supplied as conditions of a variance granted pursuant to this subdivision.

(3) The commissioner shall require that an economic adjustment fee must be deposited with the commissioner before a temporary variance will be granted. The economic adjustment fee shall equal the economic benefit that may accrue because of the lower cost of gasoline that does not comply with section 225-3.3 of this Subpart, in comparison with gasoline that does.

Historical Note

Sec. filed Dec. 6, 1988; renum. 225-3.8, new filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993; Aug. 10, 1993 as emergency measure, expired Sept. 3, 1993; repealed, new added by renum. and amd. 225-3.8, filed Oct. 5, 2001 eff. 30 days after filing

§ 225-3.6 Severability.

Each provision of this Subpart shall be deemed severable, and in the event that any section of this Subpart is held to be invalid, the remainder of this Subpart shall continue in full force and effect.

Historical Note

Sec. added by renum. and amd. 225-3.4, filed: Sept. 17, 1992 as emergency measure, expired 90 days after filing; Dec. 18, 1992 as emergency measure; Feb. 12, 1993 as emergency measure; April 12, 1993 as emergency measure; June 11, 1993 as emergency measure; Aug. 3, 1993; Aug. 10, 1993 as emergency measure, expired Sept. 3, 1993, renum. 225-3.4, new added by renum. 225-3.10, filed Oct. 5, 2001 eff. 30 days after filing.

§ 225-3.7

Historical Note

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§ 225-3.8

Historical Note

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§ 225-3.9

Historical Note

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§ 225-3.10

TITLE 6 ENVIRONMENTAL CONSERVATION

§ 225-3.10

Historical Note

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