



January 8, 2009

DMS NOTICE
P-09-1

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Fuel Price Advertising

There are many pricing scenarios used by retail service station operators to entice motorists to buy fuel. Most comply with price sign advertising and device requirements in the Business and Professions Code, and California Code of Regulations. Many do not. This Division does not limit marketing ideas used to sell fuels. This Division does ensure that marketing practices comply with established rules, are fair, and do not mislead consumers.

Differential pricing between credit cards, debit cards, and cash etc. has raised concerns regarding fuel price advertising and dispenser functionality.

State law allows a station operator to offer discounted fuel prices for various methods of payment; the conditions of sale must be conspicuous, unambiguous, and easily understood by the customer; all price advertising must comply with legal requirements; and advertising shall not be misleading or fraudulent (B&P Code; Div. 5, Chapter 14, S. 13413, S. 13470, S. 13532). For example if the advertising states one price for credit and another for cash, the credit price can only be applied to a credit transaction; non credit cards such as debit cards must be afforded the cash price. In this instance, charging the credit price for a debit card would result in a violation. If the operator does not wish to extend the cash price to debit cards the sign must be more specific such as "Credit/Debit" for one price and "Cash" for another price. Here it is permissible to charge the credit card price when a debit card is used.

Where different prices are offered for different methods of payment it is necessary to consider functionality of the dispensers; how and if they can handle these prices. The ability of a particular dispenser to compute different prices will determine the method and type of advertising available to the station operator. While most modern dispensers have the ability to compute multiple prices, many older models do not. The options designed into the dispenser model will directly limit the type and number of alternative discounts that can be offered.

All retail motor fuel dispensers installed since 1991 that offer fuel at different prices, must provide controls to enable the customer to select the price before delivery of the product. **(CCR 4000; NIST HB 44, 3.30, S.1.6.4.1.)** Many



dispensers allow the customer to activate the dispenser by inserting a card, (ATM, credit or debit). This is not a customer control for selecting the type of transaction and has been the source of problems, with the dispensers defaulting to the highest price without regard to the intent of the customer. Some operators, whose equipment does not correctly provide the appropriate customer controls, have posted instructions to enable the customer to circumvent the default on the device and obtain the required price. If the customer does not adhere to these instructions they are often charged the higher price. This does not comply with S.1.6.4.1. The device owner cannot rely solely on a label with printed instructions for the customer to follow. Station owners must ensure that all dispensers capable of computing at different prices are configured correctly to allow the customer to select the method of payment (cash, credit, or debit) before dispensing fuel. Each must be clearly and conspicuously labeled.

Please contact Gary Castro, Branch Chief of the Weighmaster and Petroleum Products Branch at (916) 229-3049 if you have any questions regarding this notice.

Sincerely,

A handwritten signature in cursive script that reads "Edmund E. Williams". The signature is written in black ink and is positioned above the printed name and title.

Edmund E. Williams
Director

Cc: Kevin Masuhara, Director, County/State Liaison