



DIRECTOR'S WRITTEN INTERPRETATION OF INTERACTION BETWEEN PORTLAND CITY CODE CHAPTER 16.60 (MOTOR VEHICLE FUELS) AND ADMINISTRATIVE RULES

On February 16, 2024, the Bureau of Planning and Sustainability (BPS) received a request to issue a written interpretation of the interaction between the definition of “fuel distributor” in code and “fuel importer” in administrative rules. Certain covered entities fall under both definitions, creating confusion for how those entities comply with the requirements in code and rule. Under authority granted to the BPS Director in Code Section 16.60.015, the Director now issues this written interpretation.

“Fuel distributor” is defined in the code as “a person that causes the transportation or storage of fuel at any point between a refinery or importer’s facility and any retail outlet or wholesale purchaser-consumer within the City.” Code Section 16.60.010.L. “Fuel Importer” is defined in the rules as “any person that brings a fuel product into Oregon from outside of the state. Including any person owning fuel from locations outside of Oregon at the time fuel is brought into the state by any means of transport, other than fuel brought into the state in the fuel tank of a vehicle used to propel the vehicle.” RFS Interim Administrative Rule Section 3.0.B.20.

There are three fact patterns where the definitions arguably conflict. However, this conflict can be resolved by considering where a covered entity’s business activities occur:

Fact Pattern No. 1

A fuel distributor acts as a fuel importer when it exclusively causes the transportation or storage of fuel at any point between a refinery or importer’s facility and a bulk facility or fuel terminal in the City. The fuel industry calls this “above the rack” activity.



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Fact Pattern No. 2

A fuel distributor is only a fuel distributor when it exclusively causes the transportation or storage of fuel at any point between when the fuel is offloaded from a truck rack at a bulk facility or fuel terminal for delivery to any retail outlet or wholesale purchaser-consumer within the City. The fuel industry calls this “below the rack” activity.

Fact Pattern No. 3

A fuel distributor is both a fuel importer and a fuel distributor when it causes the transportation or storage of fuel at any point between a refinery or importer’s facility and a bulk facility or fuel terminal in the City, and also distributes fuel to any retail outlet or wholesale purchaser-consumer within the City. The fuel industry calls this both “above” and “below the rack” activity.

For enforcement purposes, BPS will consider any entity that exclusively meets the conditions in Fact Pattern No. 1 as a fuel importer and not as a fuel distributor. BPS will consider any entity that exclusively meets the conditions in Fact Pattern No. 2 as a fuel distributor. Lastly, BPS will consider any entity that meets the conditions in Fact Pattern No. 3 as both a fuel importer and as a fuel distributor.



3/13/2024

Donnie Oliveira, Director

Date

