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New York State Article 16 of the Agriculture and Markets Law Weights and Measures

Section 192-h. Alternate generated power source at retail gasoline outlets.

1. Definitions. When used in this section:

- (a) "Alternate generated power source" means electric generating equipment that is of a capacity that is capable of providing adequate electricity to operate all dispensers, dispensing equipment, life safety systems and payment-acceptance equipment located at a retail outlet and which can operate independent of the local electric utility distribution system and provide electricity during a general power outage or declared energy or fuel supply emergency to operate the systems named herein.
- (b) "Chain of retail outlets" means a network of subsidiaries or affiliates, under direct or indirect common control, that operate ten or more retail outlets located in a single downstate region; provided, however that this term does not include any franchisor of the brand of motor fuel being sold at such outlet, except if such franchisor owns such outlet.
- (c) "Controlled access highway" means every highway, street, or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over such highway, street, or roadway.
- (d) "Diesel motor fuel" means any fuel sold in this state and for use in diesel engines which is commercially known or offered for sale as diesel motor fuel.
- (e) "Dispenser" means a device located at a retail outlet that is used to pump motor fuel from an above-ground or underground storage tank into a motor vehicle.
- (f) "Downstate region" means each of the following regions of the state:
 - (i) Long Island region: Includes Nassau and Suffolk counties.
 - (ii) Lower Mid-Hudson region: Includes Rockland and Westchester counties.
 - (iii) New York city region: Includes Bronx, Kings, New York, Queens and Richmond counties.
- (g) "Evacuation route" means those roads designated by each county that are to be used by motorists in case of a hurricane or other natural disaster.
- (h) "Franchisor" means a person or company that grants a franchise to a franchisee.
- (i) "Gasoline" means any fuel sold in this state for use in internal combustion engines which is commercially known or offered for sale as gasoline, whether or not blended with ethanol or other chemicals.
- (j) "Motor fuel" means any petroleum product, including any gasoline or diesel motor fuel, which is used for the propulsion of motor vehicles.
- (k) "Retailer" means any person who owns, operates, or controls a retail outlet that is subject to the requirements of subdivision two of this section.
- (l) "Retail outlet" means a facility, including all land, improvements and associated structures and equipment, that dispenses motor fuel for sale to the general public.

2. Prewiring and transfer switch. (a) Retail outlets in the downstate region shall be prewired with an appropriate transfer switch for using an alternate generated power source at such retail outlets as follows:

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(i) each retail outlet in operation on the effective date of this section that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route shall be rewired by no later than April first, two thousand fourteen;

(ii) each retail outlet beginning operation after the effective date of this section and before April first, two thousand fourteen that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route shall be rewired by no later than April first, two thousand fifteen;

(iii) each retail outlet that is located within one-half mile by road measurement from an evacuation route that is designated as such after the effective date of this section or within one-half mile by road measurement from an exit road that is established after the effective date of this section shall be rewired within one year of such designation or establishment provided that funding is available at such time for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law; and

(iv) thirty percent of all retail outlets that are part of a chain of retail outlets, exclusive of those included in subparagraphs (i), (ii) and (iii) of this paragraph, shall be rewired by no later than August first, two thousand fifteen, provided, however, in the case of an existing retail outlet that becomes part of a chain of retail outlets after the effective date of this section and that has been designated by the chain as an outlet comprising such thirty percent, by no later than August first, two thousand fifteen or one year after becoming part of such chain, whichever is later, and provided further, in the case of a retail outlet that is part of a chain of retail outlets, is part of such thirty percent and is subject to paragraph (b) of this subdivision as required in paragraph (b) of this subdivision.

(b) Each retail outlet for which a building permit is issued on or after April first, two thousand fourteen for new construction or for substantial demolition and reconstruction, shall be rewired with an appropriate transfer switch for using an alternate generated power source.

(c) Such transfer switch and all associated electrical wiring shall be installed, operated, and maintained in compliance with all applicable provisions of the New York state uniform fire prevention and building code or any applicable local building code or standard. Installation of appropriate wiring and transfer switches shall be performed by a licensed electrical contractor.

(d) Each retailer shall keep on file at the retail outlet a written statement in a form approved by the department and containing an attestation by a licensed electrician that the wiring and transfer switch were installed in accordance with the manufacturer's specifications. In addition, each such retailer shall maintain the wiring and transfer switch in accordance with the manufacturer's specifications.

(e) Each retail outlet in operation on the effective date of this section that sold less than seventy-five thousand gallons of motor fuel per month on average for the period they were in operation during the twelve months prior to the effective date shall be exempt from the requirements of this subdivision.

3. Emergency deployment. In the event that a declaration of an energy or fuel supply emergency issued by the governor, the county executive of a county in the downstate region or the mayor of a city with a population in excess of one million inhabitants is in effect, a retailer of a retail outlet within any such county or city for which such declaration was issued shall deploy and install an alternate generated power source as follows:

(a) For a retail outlet subject to the requirements of: (i) subparagraphs (i), (ii) or (iii) of paragraph (a) of subdivision two of this section or (ii) paragraph (b) of subdivision two of this section that is located in the downstate region and that is located within one-half mile by road measurement from an exit road on a controlled access highway or from an evacuation route, within twenty-four hours of such declaration, if such outlet is without power at the time of such declaration. Provided, however, if any such outlet loses power following such declaration and while the declaration is still in effect, then the alternate generated power source shall be deployed and installed within twenty-four hours of such loss of power.

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(b) For a retail outlet prewired pursuant to the requirements of subparagraph (iv) of paragraph (a) of subdivision two of this section, within forty-eight hours of such declaration, if such outlet is without power at the time of such declaration. Provided, however, if any such outlet loses power following such declaration and while the declaration is still in effect, then the alternate generated power source shall be deployed and installed within forty-eight hours of the loss of power.

3-a. Declaration of energy or fuel supply emergency. Upon issuance of a declaration of an energy or fuel supply emergency pursuant to this subdivision, a county executive of a county in the downstate region or mayor of a city with a population in excess of one million inhabitants who declared such emergency shall promptly notify the president of the New York state energy research and development authority, the commissioner of homeland security and emergency services, and impacted residents using such means as are practicable and efficient.

4. Plan for alternate generated power source. Each retailer subject to subdivision three of this section shall by the date of the installation of the prewiring and transfer switch required under subdivision two of this section have in place at each applicable retail outlet documentation in a form approved by the department demonstrating a plan to deploy and install an alternate generated power source located at such retail outlet as required under subdivision three of this section. Such plan shall take one of the following forms:

(a) a receipt or other documentation showing ownership of such power source;

(b) for a retailer subject to paragraph (a) of subdivision three of this section, documentation attesting to participation in the program established under subdivision twenty-one of section eighteen hundred fifty-four of the public authorities law; or

(c) a contract with a supplier of such power source providing for deployment and installation of such power source in compliance with the requirements of this section, or other documentation demonstrating the retailer's ability to comply with the requirements of this section, which may include the generator deployment and installation plan of a chain of retail outlets.

5. Inspection; recordkeeping; reporting. The commissioner or the commissioner's designee shall be authorized to enter during regular business hours upon a retail outlet subject to the requirements of subdivision two of this section for the purpose of determining compliance with the provisions of this section and any rules or regulations promulgated hereunder. All documents required pursuant to subdivisions two and four of this section shall be maintained at the applicable retail outlet and made available to the commissioner or the commissioner's designee upon request. In addition, each retailer of a retail outlet, except for retail outlets granted exemptions under paragraph (e) of subdivision two of this section, shall provide to the department by April first, two thousand fourteen and every two years thereafter written documentation in a form approved by the department certifying that such retail outlet is in compliance with the requirements of this section, and any other requirement specified by any rules or regulations promulgated hereunder; provided, however, that, for each retail outlet that is part of a chain of retail outlets or to which subparagraph (ii) or (iii) of paragraph (a) or paragraph (b) of subdivision two applies, such written documentation shall be provided to the department within ten days after the date of installation of the prewiring and transfer switch required to be installed under subdivision two of this section and every two years thereafter.

6. Rules and regulations; notification of applicability. The commissioner shall have the authority, with the assistance of the commissioner of transportation, the commissioner of homeland security and emergency services, the president of the New York state energy research and development authority, the secretary of state and the chair of the public service commission, to promulgate such rules and regulations as the commissioner shall deem necessary to effectuate the purposes of this section. The commissioner shall by June first, two thousand thirteen: (a) notify by first class mail all existing retail outlets that appear to meet the criteria specified in subdivision two of this section of the requirements of this section and include with such notification any other information deemed necessary by the commissioner, including information regarding applicability criteria, compliance measures and potential grant assistance; (b) provide a list of all such retail outlets to the governor, the temporary president of the senate and the speaker of the assembly; and (c) post such list on the department's website. If approval of federal mitigation funds or other approved resources for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law occurs after June first, two thousand thirteen, the commissioner shall provide

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additional notification of such approval within thirty days. Any retailer of a retail outlet specified on such list shall be subject to the requirements of this section unless he or she provides written documentation to the department by August first, two thousand thirteen proving that such outlet does not qualify, or is eligible for an exemption pursuant to paragraph (e) of subdivision two of this section. The commissioner shall update such list every five years thereafter and notify all new retail outlets that become subject to the requirements of this section; provided, however, that compliance with the requirements of this section is not conditioned on such notification.

7. Violations and penalties. Any retailer who violates any provision of this section, or any rule or regulation promulgated hereunder, shall be liable to the people of the state for a civil penalty of up to one thousand five hundred dollars per day for every such violation, to be assessed by the commissioner, after a hearing or opportunity to be heard upon due notice and with the right to representation by counsel. In determining the amount of civil penalty, the commissioner shall take into consideration mitigating factors, such as the availability of gasoline at the retail outlet, provided that the retailer did not refuse such delivery, and the extent to which the retailer's action or inaction contributed to the violation. Such penalty may be recovered in an action brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction. Such civil penalty may be released or compromised by the commissioner before the matter has been referred to the attorney general. Additionally, after such hearing and a finding that such retailer has violated the provisions of this section, or of any rule or regulation promulgated thereunder, the commissioner may issue and cause to be served upon such person an order enjoining such person from violating such provisions and taking all necessary actions for such person to come into compliance with such provisions. Any such order of the commissioner may be enforced in an action brought by the attorney general at the request and in the name of the commissioner in any court of competent jurisdiction.

Notwithstanding the foregoing, such retailer shall not be in violation of subdivision three of this section if he or she is unable to deploy, install or operate an alternate generated power source because of uncontrollable circumstances, including but not limited to, restrictions imposed by public safety officers to address an emergency situation or that such retail station is made unsafe or unable to operate due to acts of God, fires, floods, explosions or the safety of personnel needed to operate such retail outlet. Additionally, such retailer shall not be in violation of subdivision three of this section if he or she is a participant in the program established under subdivision twenty-one of section eighteen hundred fifty-four of the public authorities law and a generator is not provided to the retailer due to the prioritization allowed under such subdivision or through no fault of the retailer.

8. This section shall not be construed to require any retailer to maintain set business hours in the event of an energy or fuel supply emergency.

9. The provisions of this section shall supersede all local laws or ordinances in the downstate region relating to the installation and deployment of an alternate generated power source or any related electrical or other equipment at any retail outlet.

10. The requirements of this section shall be contingent on the approval of federal mitigation funds or other approved resources for the program established under subdivision twenty of section eighteen hundred fifty-four of the public authorities law. In the event such approval does not occur as of June first, two thousand thirteen, all deadlines with a date of April first, two thousand fourteen shall be delayed by the amount of time such approval is delayed past June first, two thousand thirteen.