

DEPARTMENT OF TRANSPORTATION
OFFICE OF MOTOR FUEL TAX ADMINISTRATION

Statutory Authority: 6 Delaware Code, Section 2912 (6 **Del.C.** §2912 et seq.)

FINAL

ORDER

2401 Regulations for the Office of Retail Gasoline Sales

BACKGROUND

Under 6 **Del.C.**, §2912, certain entities that distribute Motor Fuels through Delaware retail service stations are required to provide pump assistance to motorists who cannot pump their own fuel. Section 2912 (a) places this requirement on Retail Dealers that offer both Full-Service and Self-Service. Section 2912 (b) places this requirement on stations that provide self-service, unless the location is operating on a remote control basis with only one employee, or someone able to provide refueling assistance is in the vehicle. Regulation 2912.1 currently requires Full/Self Service Retail Stations to conspicuously post a sign describing the pump service requirements. There is not a similar sign requirement for affected Self-Service Retail Stations. The purpose of this proposed change is to place the sign-posting requirement on Self-Service retail stations as well. In addition, format, numbering and style changes were made consistent with Administrative Procedures Act and Administrative Code styling.

Proposed changes to the existing regulations were previously advertised in the September 2006 *State Register of Regulations*. Initial comments on the proposed changes were received between September 21, 2006 and July 31, 2007.

REGULATORY IMPLEMENTING ORDER

I. Summary of the Evidence and Information Submitted.

The Secretary of the Delaware Department of Transportation approves the proposed regulation as published in the *Delaware Register of Regulations* on September 1, 2006. Notices of the proposed regulation were published in the *Delaware State News* and the *News Journal* on December 26, 2006 and January 23, 2007. The notices invited written comments, and several comments were received. The notices also invited the public to attend a hearing on January 31, 2007 to comment on the proposed regulation. No members of the public attended the hearing. As a result of the comments received, two non-substantive changes were made:

1. The term "Handicapped" was replaced with the phrase "persons with disabilities".
2. References to refueling of gasoline were changed to refueling of motor fuels, to encompass other products besides gasoline being sold at retail service stations.

II. Findings of Fact.

The Secretary of Transportation finds that it is necessary to adopt the regulation to promote the provision of assistance to persons with disabilities, in accordance with the Americans with Disabilities Act and Delaware law.

III. Decision to Adopt the Regulation.

For the foregoing reasons, the Secretary of Transportation concludes that it is necessary to adopt the regulation. Therefore, pursuant to 6 **Del.C.** §2911, the regulation attached hereto is hereby adopted.

IV. Text and Citation.

The text of the regulation amended hereby shall be in the form attached hereto, and said regulation shall be cited in the Regulations of the Department of Transportation, Division of Motor Vehicles, Motor Fuel Tax Administration.

FINAL REGULATIONS

V. Effective Date of Order.

The action referred to above was taken on August 14, 2007. The effective date of this Order shall be ten

(10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED, this 14th day of August, 2007.

Carolann Wicks, P.E., Secretary
Delaware Department of Transportation

2401 Regulations for the Office of Retail Gasoline Sales

1.0 Definitions

Definitions in 6 **Del.C.** §2901 are applicable to these regulations. The following words and phrases, when used in these regulations and for the purpose of the administration of 6 **Del.C.** Ch. 29, shall have the meaning ascribed to them except where the context clearly indicates a different meaning:

"Act" means 6 **Del.C.** Ch. 29, the Retail Sales of Motor Fuel Act.

"Commissioned agent" means a person, partnership, corporation or other entity which directly or indirectly receives from a manufacturer, and for participation in the operation of a station or any portion thereof, compensation determined by reference to the profits earned or revenues generated at the station.

"Company personnel" means one or more employees or agents of a manufacturer, or a subsidiary of a manufacturer.

"Council" means the Retail [**Gasoline Motor Fuel**] Sales Advisory Council created pursuant to 6 **Del.C.** §2911(b).

"Fee arrangement" means any agreement whereby a person, partnership, corporation or other entity directly or indirectly receives, from a manufacturer, and for participation in the operation of a station or any portion thereof, compensation determined other than by reference to the profits earned or revenues generated at the station.

"Motor vehicle fuel" or "motor fuel" means gasoline, special fuel or both.

"Office" means the Office of Retail Gasoline Sales.

"Retail service station" or "service station" or "retail gasoline outlet" means the real property and improvements thereto from which motor fuel is sold at retail and delivered into the tanks of motor vehicles.

"Secretary" means the Secretary of Transportation.

"Subsidiary company" or "subsidiary" means a corporation 50% or more of the assets, capital stock or voting securities of which are owned by or pledged to, directly or through attribution, another corporation; or a corporation which as a practical matter is controlled by another corporation.

2.0 Price Signs on Fuel Pumps and Premises

2.1 When the price indicated on the computing mechanism of a pump or other dispensing device offering motor fuel for sale is the per gallon price, that is the only price sign required to be displayed on said pump.

2.2 When the price indicated on the computing mechanism of a pump is the per liter price, another sign indicating the equivalent price per gallon to the nearest 1/10 cent must be prominently displayed on said pump with numerals no smaller than those which display the liter price. In addition to the unit price, the signs on the pump may indicate that state and federal taxes are included in the unit price. (All taxes must be included in the advertised price.)

2.3 The price indicated on the computing mechanism is the maximum price which may be charged per measured unit and the resulting total cost computed is the maximum remittance that can be demanded from the consumer for the fuel sold.

2.4 A cash discount may be offered which is less than the computed cost, but a surcharge for credit, or any other reason, may not be added to the computed cost for the fuel sold.

2.5 Separate pumps may be provided for cash and charge sales of the same brand, grade, type of fuel and service, providing that the pumps are adequately and prominently identified.

2.6 Price signs displayed on the station premises and not attached to a pump must indicate the grade of fuel, the type of service and the unit, if other than gallon. If there are special requirements to qualify for an advertised price, such as minimum quantities, cash, etc., those requirements must also be prominently included on said sign.

2.7 Fractions of a cent on the price advertised must be of the same general design and at least one-

half the height and width of the numerals representing the whole cents.

3.0 Manufacturers

3.1 License-Declaration of desire to sell in combined forms.

3.1.1 License-Declaration. All manufacturers of motor fuel and individuals desiring to sell motor fuels or special fuels through retail stations in Delaware shall procure a license for each establishment, operated as required by sections 5102 and/or 5134, Title 30, **Delaware Code**.

Form number MFT-6, Retail **Gasoline Motor Fuel** License or Form number SF-1, Retail Special Fuel License, is required.

3.1.2 Amendment to License-Declaration. If any change (except changing suppliers) occurs causing the information contained in either form MFT-6 or SF-1 to become inaccurate, the holder of the uncanceled license shall within 30 days cancel said license and apply for a new license containing the proper information. If the business is sold, it is the holder of the then invalid license who must cancel said license with the Department of Transportation.

3.2 Access to information.

3.2.1 Books and Records. Whenever the Office has reason to believe that a manufacturer has engaged in, is engaging in, or is about to engage in any practice in violation of the Act or regulations, or in order to verify the accuracy of any information submitted to the Office, the Office may demand access to the books, records and data of the manufacturer. A manufacturer shall make such information available to the Office for inspection or copying during normal business hours unless otherwise agreed.

3.2.2 Samples. Any seller of fuels within the scope of this Act shall, upon the request of the Office, provide samples of any motor fuel or special fuel for chemical analysis or other inspection, and reimbursement shall be made for the samples taken.

3.2.3 Standard Specification for Fuels.

3.2.3.1 Any motor fuel sold at retail or intended to be sold at retail in the State of Delaware which does not meet or exceed ASTM specifications for that type fuel and which causes "fuel related performance problems" for the motoring public may be ordered corrected or removed from the marketplace.

3.2.3.2 Violation of Standards-Stop Sale. If a sample taken by the Office and tested by a qualified laboratory finds the sample to be substandard for any of the reasons established as standards or limitations written herein, the Office shall issue a Stop Sale for all or any portion of the seller's operation which is in violation until the violation has been corrected. The Office shall have the authority and duty to decide when the steps taken were sufficient to correct the violation and inform the seller of when sales may resume.

3.2.3.3 Whenever the Office finds any person marketing petroleum products in violation of this Act or its Regulations and has issued a Stop Sale directing them to cease such violation and the violation continues, the Office shall refer the matter to the Attorney General and he shall take appropriate legal action.

4.0 Independence of Retail Dealers

4.1 Ban against company-operated service stations.

4.1.1 Notification of company-operated stations. Every manufacturer operating a station with company personnel, a subsidiary company, a commissioned agent or under a fee arrangement shall submit to the Office a written notification which, with regard to each station so operated, shall specify the address, describe the manner of operation and state the date that company operation began.

4.2 Temporary operation of a previously dealer-operated station by manufacturers of petroleum products.

4.2.1 Temporary operation. After July 29, 1974, a manufacturer of petroleum products may operate, for a period not to exceed 30 days, a previously dealer-operated station only if the dealer:

4.2.1.1 vacated the station in breach of his lease; or

4.2.1.2 takes an extended vacation or a temporary leave and there is a mutual agreement of operation; or

4.2.1.3 was terminated or not renewed as provided for by P.M.P.A., 15 U.S.C.A. §2801 and/or evicted by the manufacturer for cause, as provided for by said Act; or

4.2.1.4 the parties mutually agree to terminate the contract. The 30-day period shall commence on the day following the date of such death, abandonment, vacation, eviction or termination.

4.2.2 Applications for exceptions. Applications for exceptions to the time period specified in

section A of this Regulation will be considered only if they are submitted to the Office in writing and specify as to each station for which such exception is requested:

4.2.2.1 the address;

4.2.2.2 the basis for the applicability of subsection A of this regulation;

4.2.2.3 the name and address of the previous dealer;

4.2.2.4 the reason why the exception is sought;

4.2.2.5 the duration of the exception sought;

4.2.2.6 a complete description of the actions being taken to locate a new dealer; and

4.2.2.7 an acknowledgement that all additional information demanded by the Office will

be provided by the applicant within 20 business days of receipt of the demand.

4.2.3 Action on applications. Decisions on applicants made pursuant to subsection 2905.2 of this Regulation shall be written and sent by certified mail, return receipt requested, to the applicant at the return address appearing on the application.

4.2.4 Operation pending action. Operation of a previously dealer-operated station by a manufacturer in excess of the time period specified in section 2905.1 of this Regulation and during the pendency of an application made pursuant to subsection 2905.2 of this Regulation shall not be allowed unless the contrary has been authorized in writing by the Office.

4.2.5 Operation of a new station by a manufacturer. Upon the approval of the Office a manufacturer may open a new station and operate said station with company personnel. Any period of time that a manufacturer would be allowed to operate a new station shall be decided by the Office on the merits of each case.

4.2.6 Rebuilding or relocating a lawfully operated outlet by a manufacturer. Rebuilding: Producer/refiner locations may be rebuilt at the same location or in reasonable proximity thereto when the station is lost to fire or other disasters, or when facilities are being remodeled or renewed.

4.3 Formal hearing procedures.

4.3.1 Formal hearing. Any person, partnership, corporation or any other entity having had an Application for Exception under Regulation 2905.2 denied by the Office may demand a formal hearing with the Secretary or his designee within 30 days after receipt of that decision or, if applicable, the date on which the application is deemed to have been denied.

4.3.2 Requisites of demand. The demand for hearing shall be in writing and set forth the grounds upon which review of the denial is sought.

4.3.3 Notice: place of hearing. After receipt of a written demand for hearing, the office shall give reasonable notice to the petitioning party and the Attorney General of the date and time for the hearing. All hearings shall be held at the Dover, Delaware address of the Office and shall be conducted by the Administrator of the Retail Gasoline Sales or his designee in accordance with 29 Del.C. Ch. 64, the Administrative Procedures Act.

4.3.4 Decision and appeal. The Hearing Officer shall render a written decision stating his findings of fact and conclusions of law. Copies of the decision shall be promptly mailed to all parties.

4.4 Effective date.

The provisions of 6 Del.C. §2905(a) shall apply only to service stations or retail outlets first operated or which began operation by company personnel, a subsidiary company or a commissioned agent after July 29, 1974.

5.0 Marketing Agreements

5.1 Marketing Agreements.

5.1.1 Non-waivable provisions. Every marketing agreement entered into, or reviewed or continuing in effect after July 29, 1974 shall expressly set forth all of the non-waivable provisions enumerated in 6 Del.C. §2909.

5.1.2 Disclosure. Contracts which do not expressly set forth all of the non-waivable provisions enumerated in 6 Del.C. §2909 may be brought into compliance with subsection 2909.1.1 of this Regulation by the attachment to such contracts of a disclosure of all such non-waivable provisions. The disclosure must be dated and signed by all parties to the contract.

5.1.3 Upon the request of the Office, a manufacturer or retail dealer shall provide the Office with a copy of any specified marketing agreement, or a sample agreement.

6.0 Office of Retail [Gasoline Motor Fuel] Sales; Rules and Regulations; Advisory Council; Injunction

6.1 Violation of act or regulation.

6.1.1 Powers. Whenever the Office receives a complaint or any information from any source, which if true would amount to a violation of the Act or Regulations;

6.1.1.1 the Office may investigate the complaint or information;

6.1.1.2 the Office may, upon investigation of the complaint or information, make recommendations to the Attorney General's Office to investigate and enforce 6 Del.C. Ch. 29 by any remedy available.

6.1.2 Procedure. In the conduct of any hearing, the procedure will be governed generally by 29 Del.C. Ch. 64, the Administrative Procedures Act, unless any less formal procedure is agreed upon by the parties.

7.0 Self-Service [Gasoline] Stations: Attendants.

7.1 Retail dealers of gasoline or motor fuel shall post a sign or signs provided to the retail dealer by the Office of Retail Gasoline Sales indicating that the service station will pump gasoline to qualified **[handicapped persons with disabilities]** from the self-service pump.

7.2 The sign(s) shall be conspicuously posted so that any driver seeking refueling services will be able to see said sign(s) from each point of access to the pump island(s). Additional signs may be posted to direct **[handicapped motorists persons with disabilities]** to the pump or pumps from which their gasoline will be dispensed.

7.3 Notification:

7.3.1 A notice of the provisions of 6 Del.C. §2912 and these rules and regulations shall be provided to all licensed motor fuel dealers and to any individual, company or firm who applies for a retail motor fuel dealers license resulting from the take-over of any existing station or new station.

7.3.2 Every person who renews or is issued a **[handicapped]** plate/placard **[for persons with disabilities]** shall have available to them an informational notice detailing the requirements of the above section of the **Delaware Code** and these rules and regulations.

7.4 ~~[Section 7.0 This regulation regarding the posting of handicapped signs at subject retail motor fuel service stations]~~ shall take effect sixty (60) days after approval of said regulation by the Office of Retail Gasoline Sales.

11 DE Reg. 517 10/01/07) (Final)