



## States' Biofuels Statutes

### STATE OF NEW YORK

*This project was undertaken in partnership with the USDA Office of the Chief Economist, The Office of Energy Policy and New Uses. For information on the full project, visit [States' Biofuels Statutory Citations](#).*

*Current through the 2013 Legislative Session of the New York General Assembly.*

#### **§ 192-c. Motor fuel standards and labelling; cetane rating of diesel fuel; alcohol content**

1. As used in this section, the following terms shall have the following meanings:

- a. "Co-solvent" means an alcohol with a higher molecular weight than methanol which is blended with methanol to prevent phase separation in gasoline.
- b. "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.
- c. "Cetane rating" means the property of a diesel motor fuel expressed as a number determined pursuant to a method adopted by the American Society of Testing and Materials, concerning the fuel's ignition properties.
- d. "Gasoline" means any fuel sold in this state for use in internal combustion engines which is commercially known or offered for sale as gasoline.
- e. "Refiner" means a person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity producing gasoline or diesel motor fuel.
- f. "Distributor" means any person, firm or corporation who purchases, transports, stores or causes the transportation or storage of gasoline or diesel motor fuel at any point between commercial entities.
- g. "Reseller" means any person who purchases gasoline identified by the corporate, trade or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brands, and whose assets or facilities are not substantially owned, leased or controlled by such refiner.
- h. "Retailer" means a person, firm or corporation who owns, leases, operates, controls or supervises a commercial entity at which gasoline or diesel motor fuel is sold or offered for sale to the general public.

i. "Wholesale purchaser-consumer" means any organization that is an ultimate consumer of gasoline and which purchases or obtains gasoline from a supplier for use in motor vehicles and receives delivery of that product into a storage tank which has a capacity of five hundred fifty gallons or more and is substantially under the control of that organization.

j. "Ultimate purchaser" means the first person who purchases gasoline for purposes other than resale.

2. No refiner, distributor, reseller or retailer shall transfer, sell, dispense or offer any grade of diesel motor fuel for sale in this state unless said diesel motor fuel meets the standards and specifications established for such product by regulations promulgated by the commissioner or by the commissioner of environmental conservation, after due notice and public hearing. No refiner, distributor, reseller or retailer shall transfer, sell, dispense or offer gasoline for sale in this state unless said gasoline meets the standards and specifications, other than those relating to octane and lead content, established for such product by regulations promulgated by the commissioner or by the commissioner of environmental conservation, after due notice and public hearing.

3. a. A refiner, distributor or reseller shall not transfer, sell or dispense gasoline for sale in this state without delivering to the purchaser a bill, invoice or other instrument evidencing the transaction which shall indicate:

(i) the presence of methanol and co-solvent, each as a percentage of the total volume, if the quantity of methanol exceeds three-tenths of one percent; and

(ii) the presence of ethanol, as a percentage of the total volume, if such quantity exceeds one percent of the total volume.

b. A refiner, distributor or reseller shall not transfer, sell or dispense diesel motor fuel in this state without delivering to the purchaser a bill, invoice or other instrument evidencing the transaction which shall indicate the cetane rating of such diesel motor fuel.

c. For the purposes of this section, the instrument evidencing the transaction shall be on such form as may be required by the commissioner. The commissioner shall consult with the department of taxation and finance and to the extent practicable, the form used for certification of prepayment of the sales tax and payment of motor fuel tax shall be modified and adapted for this purpose, such that said form shall indicate the brand, type and quality of each product delivered.

4. a. A refiner, distributor or reseller shall not transfer, sell, dispense, or offer gasoline or diesel motor fuel for sale in this state to a retailer unless the refiner, distributor or reseller provides to the retailer the materials necessary to comply with the posting requirements contained in this section.

b. It shall be a defense to any violation of paragraph a of this subdivision that a refiner, distributor or reseller, if acting in good faith, had reasonable cause to believe that the retailer had the materials necessary to comply with the posting requirements contained in this section. No common carrier shall be held liable for any violation of paragraph a of this subdivision to the extent that the materials necessary to comply with such posting requirements were not transferred to him or her or his or her agent along

with such gasoline or diesel motor fuel.

c. Each retailer shall record, for each day during which gasoline or diesel motor fuel is sold or offered for sale to the general public the cumulative gallon meter readings for each retail petroleum dispensing device and the volume contained in each gasoline and diesel motor fuel storage tank. These records shall be maintained for a period of one year.

5. a. A retailer or reseller shall not transfer, sell, dispense or offer gasoline for sale in this state if it contains more than:

(i) one percent by total volume of ethanol unless the retail petroleum dispensing device displays a sign with at least one-quarter inch block letters on a contrasting background, reading "Contains.....% Ethanol", the blank being filled in with the maximum percentage of ethanol in the gasoline; and

(ii) three-tenths of one percent of total volume of methanol unless the retail petroleum dispensing device displays a sign with at least one-quarter inch block letters on a contrasting background reading "Contains.....% Methanol" and "Contains.....% Co-Solvent", the blanks being filled in with the maximum percentage of methanol and minimum percentage of co-solvent in the gasoline.

b. A retailer shall not transfer, sell, dispense or offer diesel motor fuel for sale in this state unless the retail petroleum dispensing device displays a sign disclosing the minimum cetane rating.

6. No refiner, distributor, reseller or retailer shall store, sell, transfer, dispense or offer for sale gasoline or diesel motor fuel in this state without having in his or her possession a copy of the bill, invoice, or other written instrument evidencing the transaction by which such refiner, distributor, reseller or retailer came into possession of the gasoline or diesel motor fuel; provided, however, that this requirement shall not apply to refiners with respect to gasoline or diesel motor fuel which such refiner has produced from crude oil.

7. a. Except as otherwise provided, any retailer, reseller or distributor charged with a violation under this section may plead and prove by a preponderance of the evidence that the violation was not caused by him or her or his or her agent or employee as an affirmative defense to such charge.

b. Notwithstanding any other provision of this section, a common carrier transporting gasoline or diesel motor fuel shall be deemed to be liable under the provisions of subdivision two of this section only if it is proved by a preponderance of the evidence that a violation was caused by him or her or his or her agent or employee.

8. a. The commissioner or his authorized representative, upon presentation of appropriate credentials, shall have the right to enter during regular business hours upon or through the premises or property of any refiner, distributor, reseller or retailer, and shall have the right to make inspections, take samples of gasoline and diesel motor fuel being stored, offered for sale or in the process of being delivered or transported, and conduct tests during normal business hours to determine compliance with this section.

b. The commissioner may require a refiner, distributor, reseller or retailer to report information regarding the receipt, transfer, delivery or sale of gasoline and diesel motor fuel and to allow the

reproduction of that information except that the refiner, distributor, reseller or retailer shall not be required to provide information not maintained in the normal course of business, except as otherwise required in this section. A refiner, distributor, reseller or retailer shall preserve information regarding the receipt, transfer, delivery, or sale of gasoline and diesel motor fuel for one year.

9. Any refiner, distributor, reseller or retailer who or which violates this section shall be liable for a civil penalty not to exceed ten thousand dollars for each violation, and for the first violation not to be less than two hundred fifty dollars, and for the second violation not to be less than one thousand dollars. In the case of a violation through continuing failure to comply with any of the provisions of this section, or any rules or regulations promulgated thereunder, each day of the continuance of such failure shall be treated as a separate violation. Provided, however, that the penalty for any violation of paragraph c of subdivision four of this section for failure to keep the required records shall be a maximum two hundred dollar civil penalty for the first violation, and a maximum four hundred dollar civil penalty for the second and subsequent violations. A right of action for the recovery of a liability for the civil penalties incurred as provided in this section may be released, settled or compromised by the commissioner or the director of a municipal consumer affairs office or a municipal director of weights and measures before the matter is referred to the attorney general as provided in section forty-four of this chapter, or by the attorney for the municipality, as the case may be, and thereafter may be released, settled or compromised by the attorney general or the attorney for the municipality, as the case may be, either before or after an action is brought to recover such penalty. The commissioner or a director of a municipal consumer affairs office or a municipal director of weights and measures may apply to a court of appropriate jurisdiction for an injunction to restrain any person subject to the provisions of this section from the further violation of such provisions or for such other relief as the court deems proper. Any plaintiff seeking such relief shall not be required to furnish security and the costs of the application may be granted in the discretion of the court. The provisions of sections thirty-nine, forty and forty-one of this chapter shall not apply to a violation described in this subdivision.

10. Whenever the commissioner or an authorized representative of the commissioner shall find that a refiner, distributor, reseller or retailer has transferred, sold, dispensed or offered gasoline or diesel motor fuel for sale in this state in violation of this section, such commissioner or his authorized representative may exercise any remedies authorized by section one hundred eighty-five of this article. Any refiner, distributor, reseller or retailer violating an order issued pursuant to this subdivision shall be subject to an additional civil penalty not to exceed five thousand dollars, notwithstanding the penalty provisions of section forty of this chapter which shall not apply to a violation of such order.

11. The provisions of this section and the regulations promulgated hereunder may be enforced concurrently by the director of a municipal consumer affairs office and/or a municipal director of weights and measures. Notwithstanding the provisions of section forty-five of this chapter, all moneys collected hereunder shall be retained by the municipality.

12. Nothing in this section shall be deemed to limit or restrict the authority of the commissioner of environmental conservation to adopt rules and regulations that affect the composition, storage, transport, handling or commerce of petroleum products for the purpose of preventing or decreasing pollution pursuant to the environmental conservation law.

13. The commissioner shall have the authority to promulgate such rules and regulations as the

commissioner shall deem necessary to effectuate the purposes of this section, consistent with its provisions.

**Credits:** (Added L.1989, c. 716, § 7. Amended L.1990, c. 190, §§ 310 to 313.)