

**DIVISION OF TAXATION
DIRECTIVE
ISSUED: November 19, 2012
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BACKGROUND

Beginning on October 28, 2012, and continuing through October 30, 2012, the storm commonly referred to as Hurricane Sandy (“Sandy”) struck the State of New Jersey with high winds and torrential rains. Sandy produced unprecedented severe weather conditions, including enormous storm surges, devastating winds, and widespread flooding; destroyed entire communities across New Jersey, and left much of the State inaccessible. The damage caused from Sandy, including fallen trees, downed power lines, damage to roadways, and unprecedented disruptions in electrical service, produced dangerous conditions throughout the State that jeopardized public safety.

Widespread power outages disrupted the orderly sale of motor fuel, making it difficult for the citizens of the State to access adequate quantities of motor fuel. The orderly and measured sale of motor fuel is necessary to ensure that all citizens of New Jersey have a steady and reliable source of power for both transportation and maintenance of essential services at home.

On October 27, 2012, in light of the dangers posed by Sandy, and pursuant to the authority provided under the Constitution and statutes of the State of New Jersey, particularly the provisions of N.J.S.A. App. A:9-33, et seq., N.J.S.A. 38A:3-6.1, and N.J.S.A. 38A:2-4, and all amendments and supplements thereto, the Governor, by Executive Order No. 104, declared a State of Emergency and, in accordance with N.J.S.A. App. A:9-34 and –51, reserved the right to utilize and employ all available resources of the State government to protect against the emergency created by Sandy.

On November 2, 2012, the Governor issued Executive Order No. 108 which, among other things, declared a limited state of energy emergency with regard to the supply of motor fuels in various counties in the State, and ordered the Board of Public Utilities to provide for the sale of motor fuels for use in a passenger vehicle bearing license plates, the last number of which is an even number, on even numbered days of each month and for license plates, the last number of which is an odd number, on odd numbered days of each month.

In addition, to deal with the shortage of motor fuel, the Federal Emergency Management Administration (“FEMA”) and the State determined that in addition to rationing, it was necessary to ensure more fuel deliveries to retail dealers of motor fuels. The State entered into an agreement (the “FEMA Fuel Agreement”) with FEMA pursuant to which FEMA, through the Defense Logistics Agency (“DLA”) of the United States Department of Defense, is delivering standard grade motor fuel to retail dealers identified by the State to be in need of supply.

AUTHORITY FOR THIS DIRECTIVE

Pursuant to Executive Order No. 116, the Governor directed the Director of the Division of Taxation to implement the provisions of the FEMA Fuel Agreement to provide for the record keeping and submittal of payment by retail gasoline stations that receive fuel pursuant to the FEMA Fuel Agreement to the Division of Taxation. This Directive is issued pursuant thereto.

The Motor Fuels Tax Act, N.J.S.A. 54:39-101, et seq. (“Motor Fuels Act”), establishes the statutory framework for the taxation of fuels distributed and sold in the State of New Jersey and provides the Director with the authority to carry into effect and execute the provisions of the Motor Fuels Act and related provisions. (N.J.S.A. 54:39-148).

DIRECTIONS TO RETAIL DEALERS RECEIVING FUEL UNDER THE FEMA FUEL AGREEMENT

1. Each Retail Dealer (as defined by N.J.S.A. 54:39-102) that receives a shipment of motor fuel under the FEMA Fuel Agreement (each herein a “FEMA Retail Dealer”) shall complete Form [RMF-90](#) “FEMA Supported Retailer’s Report”, a copy of which is attached to this Directive and is incorporated hereof.
2. Each FEMA Retail Dealer shall sell fuel subject to the FEMA Fuel Agreement (“FEMA Fuel”) at the price per gallon pursuant to the rules set forth in N.J.S.A. 56:6-2 and shall certify on Form [RMF-90](#) that the FEMA Fuel was sold in conformance with such rules and that the FEMA Retail Dealer is in compliance with all applicable Federal, State and local laws.
3. Each FEMA Retail Dealer shall ensure that the price per gallon charged to customers for the FEMA Fuel is commercially reasonable and that the price charged shall not result in any unjust enrichment to the FEMA Retail Dealer.
4. Upon receipt of the FEMA Fuel, each FEMA Retail Dealer shall sell the FEMA Fuel as promptly as possible to customers during the Retail Dealer’s regular business hours.
5. The submission of the Form [RMF-90](#) by the FEMA Retail Dealer shall constitute a certification by the FEMA Retail Dealer that the FEMA Fuel has been sold in accordance with this Directive. Any violation of the requirements set forth in this Directive for the sale of FEMA Fuel by any FEMA Retail Dealer shall subject such FEMA Retail Dealer to penalty under applicable law.
6. The “Calculated Wholesale Price” shall mean: \$3.399 per gallon and shall be deemed to include the wholesale price of the FEMA Fuel plus applicable federal and state taxes plus markup.
7. Within twenty (20) days of the end of the month in which all of the FEMA Fuel has been sold, the FEMA Retail Dealer shall complete Form [RMF-90](#) and remit to the State by [insert means of payment] the total amount due (“Remittance Amount”) as set forth on in Section 1, Line 3 of Form [RMF-90](#).

8. The records of each FEMA Retail Dealer shall be maintained for a period of four (4) years and shall be subject to audit upon the direction of the Director of the Division of Taxation.