

DEPARTMENT OF AGRICULTURE
Office of the Consumer and Environmental Protection
(New Administrative Regulation)

302 KAR 79:011. Motor fuel quality testing and inspection program.

RELATES TO: KRS 363.900-363.908, 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 16 C.F.R. 306, 16 C.F.R. 309, 40 C.F.R. 80.27

NECESSITY, FUNCTION, AND CONFORMITY: KRS 363.902 requires the commissioner of the department to implement and administer an inspection and testing program for motor fuels. This administrative regulation establishes procedures to implement and administer a motor fuels inspection and testing program.

Section 1. Definitions.

(1) "Alternative fuel" means methanol, denatured ethanol, and other alcohols; mixtures containing eighty-five (85) percent or more by volume of methanol, denatured ethanol, and other alcohols with gasoline or other fuels; natural gas; liquefied petroleum gas; hydrogen; coal – derived liquid fuels; fuels, other than alcohol, derived from biological materials.

(2) "Anti-Knock Index" or "AKI" means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): $AKI = (RON+MON)/2$; this value is called by a variety of names, in addition to anti-knock index, including: Octane rating, Posted octane, $(R+M)/2$ octane.

(3) "ASTM International" means the international voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, services and the promotion of related knowledge.

(4) "Automotive Fuel Rating" means the automotive fuel rating required under the amended Automotive Fuel Ratings, Certification and Posting Rule, 16 C.F.R. Part 306. The automotive fuel rating for alternative non-liquid automotive fuels is expressed in 16 C.F.R. Part 309.

(5) "Aviation gasoline" means a type of gasoline suitable for use as a fuel in an aviation spark-ignition internal combustion engine.

(6) "Aviation turbine fuel" means a refined middle distillate suitable for use as a fuel in an aviation gas turbine internal combustion engine.

(7) "Biodiesel" means a fuel comprised of, at least ninety-nine (99) percent by volume, mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B-100 or B-99.

(8) "Biodiesel blend" means hydrocarbon-based diesel fuel blended with between six (6) and twenty (20) percent by volume biodiesel and may contain fuel additives.

(9) "Biomass-based diesel" means a diesel fuel substitute produced from nonpetroleum renewable resources that meets the registration requirements for fuels and fuel additives established by the Environmental Protection Agency under 42 U.S.C. 7545§ (o) (1) (D), and includes fuel derived from animal wastes, including poultry fats and poultry wastes, and other waste materials, or from municipal solid waste and sludges and oils derived from wastewater and the treatment of wastewater.

(10) "Compressed Natural Gas (CNG)" means natural gas which has been compressed and dispensed into fuel storage containers and is suitable for use as an engine fuel.

(11) "Department" means the Kentucky Department of Agriculture.

(12) "Diesel" means a refined hydrocarbon suitable for use as a fuel in a compression-ignition internal combustion engine that may contain fuel additives and up to five (5) percent by volume of biodiesel or biomass-based diesel.

(13) "Distributor" means any carrier or supplier who transports or stores, or causes the transportation or storage, of motor fuel without taking title to or otherwise having ownership of the motor fuel and without altering either the quality or quantity.

(14) "Ethanol flex fuel blends", commonly known as "Flex Fuel", means gasoline-ethanol mixtures of more than fifty-one (51) percent but not greater than eighty-three (83) percent ethanol by volume, restricted for use as fuel in vehicles equipped with flexible-fuel spark ignition engines.

(15) "EPA" means the United States Environmental Protection Agency.

(16) "Gasoline" means a volatile mixture of liquid hydrocarbons containing small amounts of additives for use as a fuel in a spark-ignition internal combustion engine and has not been blended with oxygenates; including neat, conventional, and recreational gasoline.

(17) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline blended with more than one (1) percent by volume oxygenate, with more than three tenths (0.3) of a percent by volume methanol, or with not more than sixteen (16) percent isobutanol; this includes gasoline-ethanol blends.

(18) "internal combustion engine" means a device used to generate power by converting chemical energy bound in a fuel via spark-ignition or compression-ignition engine combustion into mechanical work to power a vehicle or other device.

(19) "License" means retail motor fuel license.

(20) "License holder" means the person, owner, retailer or their delegated representative, that is financially responsible for the cost of fees, fines, corrective actions and remediation of motor fuel quality, to ensure compliance with the Motor Fuel Inspection and Testing Program pursuant to KRS 363.900-908.

(21) "Liquefied natural gas" or "LNG" means natural gas that has been liquefied at negative two hundred sixty degrees Fahrenheit (-260 °F) and stored in insulated cryogenic tanks for use as a motor fuel.

(22) "Liquefied petroleum gas" or "LPG" means a mixture of normally gaseous hydrocarbons, predominantly propane that has been liquefied by compression or cooling, or both, to facilitate storage, transport, and handling for use as a motor fuel.

(23) "Manifolded" means a piping connection between two or more tanks that allows fuel to freely flow from one tank to another thus drawing product from multiple tanks.

(24) "Mid-level ethanol flex fuel blends" means gasoline-ethanol mixtures containing between sixteen (16) and fifty (50) percent ethanol by volume, restricted for use in flexible-fuel vehicles with automotive spark-ignition engines.

(25) "Oxygenate" means an oxygen-containing organic compound, such as an alcohol, like ethanol, that can be used as a fuel or fuel supplement.

(26) "Person" means an individual, partnership, corporation, company, firm, association, or other business entity.

(27) "Premium diesel" means diesel fuel identified on retail dispensers with an additional term incorporated directly in a product or grade name that differentiates the fuel and implies the fuel provides properties that meet or exceed minimum specification limits or performance.

(28) "Product transfer documentation" means a bill of lading, invoice, loading, delivery, or meter ticket, bill of sale, or any combination of product delivery documentation meeting the requirements specified in this regulation, that shall accompany a shipment of motor fuel.

(29) "Racing gasoline" means a specialty fuel typically used in non-road racing vehicles that is generally of lower volatility, has a narrower boiling range and a higher octane rating than gasoline or gasoline-oxygenate blends made for use in conventional passenger vehicles.

(29) "Reid Vapor Pressure" or "RVP" means a measure of the volatility of gasoline and gasoline-oxygenate blends; it is the property of a liquid fuel that outlines its evaporation characteristics.

(30) "Retail facility" means a licensed service station, garage, truck stop or other outlet selling from a motor fuel retail dispensing device that is compliant with 302 KAR 81:010, for the purpose of engaging in the business of selling or distributing motor fuel to the consumer. A retail facility does not include an outlet using such dispensers exclusively for company and fleet use and price contract sales.

(31) "Stop-sale order", means when a motor fuel product(s) is removed from sale to the consumer.

(31) "Stop-sale order, administrative" means, when a motor fuel product(s) is ordered removed from sale to the consumer due to a violation(s) not related to motor fuel quality standards and specifications.

(32) "Stop-Sale Order, Motor Fuel Quality" means, when a motor fuel product(s) is ordered removed from sale to the consumer for failure to conform to minimum specifications for the particular type, class and grade.

(33) "Storage tank" means a tank located either above or below ground used to hold motor fuel intended for retail sale.

(34) "V/L" means vapor to liquid ratio.

Section 2. Licensing and Renewal.

(1) No person shall offer for sale retail motor fuel to consumers without first obtaining a license from the department.

(a) Operating a retail facility without a retail motor fuel license may result in the placement of an administrative stop-sale order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale.

(2) Each retail facility motor fuel license shall be effective from the date of issuance until January 31 and shall be renewed annually.

(3) After January 31, 2023, the department will provide the ability to apply for or renew retail motor fuel licenses online.

(a) Paper applications and payments will no longer be accepted after January 31, 2023.

(b) Paper applications and payments submitted after January 31, 2023 will not be processed.

(4) A valid retail motor fuel license shall be conspicuously displayed at the retail facility.

(5) Retail motor fuel licenses are non-transferable.

(6) A retail motor fuel license will not be issued without an application having been first submitted.

(a) Applications must be complete when submitted.

(b) Payment must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

(c) Applications without payment will not be processed.

(d) Payments received without a completed application will not be processed.

(e) The license holder shall affirm or modify the availability of each motor fuel offered for sale with each license application or renewal, this includes any motor fuel subject to a Declaration of Non-Sale, as provided for in 302 KAR 79:011(9)(10).

(f) The license holder shall confirm that all retail dispensing devices used for retail sales are compliant with 302 KAR 81:010.

(7) Unpaid fines assessed under the Motor Fuel Quality Testing and Inspection Program may result in the denial of license issuance.

(8) No license holder shall offer for sale a new motor fuel, or a motor fuel not identified in this administrative regulation or 302 KAR 79:012, without first notifying the department in writing.

(9) A license holder shall notify the department in writing within ten (10) consecutive days of when any of the following occurs or is likely to occur:

(a) When the retail facility closes;

(b) When license holder information changes;

(c) When a license holder intends to permanently modify motor fuel products offered for sale, or storage tank allocation;

(d) When a retail facility has a storage tank that has been entered into temporary closure, in accordance with any law or regulation.

Section 3. Labeling.

(1) The label showing the minimum automotive fuel rating shall meet the same specifications required in 16 C.F.R. Part 306 or 16 C.F.R. Part 309.

(2) Retail dispensing devices shall display the octane rating certified on the product transfer documentation to the license holder of gasoline and gasoline-oxygenate blends being offered for sale to consumers. At least one (1) label on the face of the dispenser shall identify the octane rating. If two (2) or more gasolines or gasoline-oxygenate blends with different octane ratings are sold from a single dispenser, then a separate label for each octane rating shall be placed on the face of the dispenser.

(3) Labels shall be placed conspicuously on the dispenser and be in full view of consumers. Labels shall be placed as near as reasonably practical to the price.

(4) During remediation the posted automotive fuel rating may differ from that certified on the product transfer documentation; otherwise, the posted automotive fuel rating must meet that which is certified on the product transfer documentation.

(5) In addition to this regulation, for gasoline containing less than one (1) percent by volume oxygenate a label shall be posted that contains words such as "neat," "conventional," "recreational," "alcohol free," "contains no ethanol," or other language approved by the department. The label shall not contain the following: "100 %" or "pure gasoline."

(6) Gasoline and gasoline-oxygenate blends must be labeled in accordance with 302 KAR 79:012 (1) (5) (a-c).

(7) Gasoline-ethanol blends with ethanol content greater than ten (10) percent, up to and including fifteen (15) percent, shall be labeled in accordance with the EPA dispenser labeling requirements in 40 C.F.R. 80.1501.

(8) "E-85" products must be labeled as "Ethanol Flex Fuel" at motor fuel retail facilities in Kentucky not later than January 31, 2023.

(9) Aviation gasoline shall be identified by the grade terms contained in the latest version of ASTM D6227 "Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", ASTM D7547 "Standard Specification for Hydrocarbon Unleaded Aviation Gasoline" and ASTM D910 "Standard Specification for Leaded Aviation Gasolines" for the particular type and grade.

(10) Aviation turbine fuels shall be identified as grades Jet A, Jet A-1, or Jet B.

(11) Racing gasoline labels shall display an AKI that meets that which is certified on the product transfer documentation.

(12) Diesel fuel other than No. 2-D shall be identified on the dispenser by grade.

Section 4. Retail Product Storage Identification.

(1) To facilitate retail motor fuel product storage identification each product storage tank or vessel shall consist of a lid or access point, rim or fixed component, and collar or permanent label.

(a) Each lid or access point and rim or fixed component for any motor fuel product storage tank or vessel at the retail level shall be permanently, plainly, and vividly marked to identify the product contained inside by means of a description and color as designated in the published "API Recommended Practice 1637; Equipment Color-Symbols System, Figures 1-3 and with a collar or permanent label.

(b) In addition to a collar or permanent label, the lid or access point, and rim or fixed component shall be identified by one of the following methods:

1. Paint the lid or access point and rim or fixed component, then place a collar or permanent label near or around the access point that states the name or description of the product such as "Regular E10"; or

2. Paint the lid or access point and rim or fixed component, then fit a collar permanent label inside the lid or access point.

(2) If a retail motor fuel product is not covered in the publication "API Recommended Practice 1637; Figures 1-3 Equipment Color Symbols System", it shall be permanently, plainly, and vividly marked to identify the product contained inside.

(3) To identify motor fuel products stored at the retail facility, a license holder shall place, in a conspicuous location, a legible chart identifying any of the following, when applicable:

(a) The location of each storage tank in use;

(b) The type and grade of motor fuel in each storage tank;

(c) Which, if any, storage tanks are manifolded;

(d) Any dispenser displaying a single product or grade on multiple buttons;

(e) The dispenser supplied by each storage tank; and

(f) Any product(s) subject to a Declaration of Non-Sale.

Section 5. Product Transfer Documentation.

(1) The requirements of this section are to be in addition to, and not in substitution of, other requirements established in any federal statute or regulation.

(2) Products regulated by this administrative regulation shall be accompanied by transfer documentation that detail components of the motor fuel.

(3) A legible paper copy, or digital representation, of the product transfer documentation shall be made available to the department prior to the conclusion of the inspection or upon request.

(4) With the exception of 302 KAR 79:011(7) (2) (b), each license holder selling motor fuel shall retain product transfer documentation for each grade at the location where the motor fuel is transferred for the last five (5) deliveries.

(5) In addition to other product transfer documentation requirements set forth in this administrative regulation, when any person transfers motor fuel, except for transfers to the consumer, the transferor shall provide to the transferee product transfer documentation that shall state the following information for each type and grade of motor fuel:

(a) The type of motor fuel being transferred;

(b) The automotive fuel rating of the motor fuel being transferred;

(c) The name and address of the transferor;

(d) The name and address of the transferee;

(e) The volume of motor fuel being transferred; and

(f) The date of the transfer.

(6) In addition to other product transfer documentation requirements set forth in this section, the following information, or similar, shall also be included:

(a) For the period June 1 through September 15, "The RVP does not exceed {fill in appropriate value} psi."

(b) For gasoline the following statement "Contains no oxygenate".

(c) For gasoline blended with ethanol in concentration of at least one (1) percent by volume in the motor fuel shall also include the following information:

1. For gasoline blended with less than nine (9) percent by volume ethanol, the following statement: "Contains up to X % ethanol. The RVP does not exceed {fill in appropriate value} psi." The term X refers to the maximum volume percent of ethanol present in the gasoline.

2. For gasoline blended with between nine (9) and ten (10) percent, by volume ethanol, the following statement: "Contains between 9% and 10% ethanol."

3. For gasoline blended with greater than ten (10) percent, by volume, and not more than fifteen (15) percent, by volume ethanol the following statement: "Contains between 10% and 15 % ethanol."

(d) For gasoline blended with an oxygenate other than ethanol, a statement declaring the name and percentage of any oxygenate or combination of oxygenates present.

(7) In addition to other product transfer documentation requirements set forth in this section, all mid-level ethanol flex fuel and ethanol flex fuel blends, must be represented by the numerical value representing the volume percentage of ethanol in the fuel, followed by the percentage sign followed by the term "Ethanol. Use Only in Flex Fuel Vehicles/May Harm Other Engines".

(a) For Mid-Level Ethanol Flex fuel blends containing more than sixteen (16) percent and no greater than fifty (50) percent ethanol by volume, the numerical value representing the volume percentage of ethanol in the fuel, must be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol";

(b) For ethanol flex fuel blends containing more than, at least, fifty (50) percent and no greater than eighty-three (83) percent ethanol by volume, the numerical value representing the volume percentage of ethanol in the fuel, must be rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol", or the phrase, "contains 51% - 83% Ethanol".

(8) In addition to other product transfer documentation requirements set forth in this section, for biomass-based diesel, biodiesel, biomass-based diesel blends with more than five (5) percent biomass-based diesel, and biodiesel blends with more than five (5) percent biodiesel, a disclosure of the Biomass-based diesel or biodiesel component, expressed as the percentage by volume. Diesel fuel must also include a statement declaring the grade as either "No.1-D" or "No. 2-D".

(9) In addition to other product transfer documentation requirements set forth in this section, premium diesel must be identified as such.

(10) In addition to other product transfer documentation requirements set forth in this section, biodiesel blend stock shall be identified by the letter "B" followed by the numerical value representing the volume percentage of biodiesel either "B-99" or "B-100", followed by the term "Biodiesel Blend Stock."

(11) In addition to other product transfer documentation requirements set forth in this section one hundred (100) percent Biomass-Based diesel shall be identified by the phrase "contains 100 % Biomass-Based diesel."

(12) In addition to other product transfer documentation requirements set forth in this section, alternative fuel, with one (1) principal component, shall be identified by indicating the

commonly-used name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume; such as "M-85, Minimum 85% Methanol".

(13) In addition to other product transfer documentation requirements set forth in this section, alternative fuel, with two (2) principle components, shall be identified by indicating the commonly-used name of the fuel along with a disclosure of the two (2) principle components, expressed as a minimum percentage by volume; such as "LPG, Minimum 90% Propane, 2% Butane".

Section 6. Unattended Stations. The license holder of a retail motor fuel dispensing site that is unstaffed shall comply with all motor fuel quality requirements set forth in this administrative regulation.

Section 7. Inspection of Premises.

(1) The department's inspector shall present proper identification to the license holder prior to obtaining samples.

(2) (a) The department shall have access to all distributor and retail facility records relating to the distribution or sale of retail motor fuel.

(b) If a license holder sells retail motor fuel at more than one (1) location, the product transfer documentation may be retained at a central location, provided that the product transfer documentation is made available to the inspector prior to the conclusion of the inspection.

(3) At each retail facility, having more than one (1) dispenser per product, the license holder must identify and affix all dispensers with an alphabetical or numerical designation.

(4) Each retail location shall have on file a chart or other means of determining each products volume in gallons. This information shall be supplied prior to conclusion of the inspection or upon request.

(5) The department shall have access to all motor fuel intended for retail sale for the purpose of examination, inspection, taking of samples, and investigations. A license holder shall not hinder or obstruct the department in the reasonable performance of its duties.

(a) If access is denied by the license holder, an administrative stop-sale order may be issued on the product identified by the department to be inspected until access is granted, even if the product(s) has been removed from sale.

(b) A license holder may be exempt from the requirement of this section by providing proof that no motor fuel is in the tank at the time of the inspection.

(6) A receipt, either printed by a device or written in clear hand script shall be provided to the department's inspector. Failure to meet the requirements of (a-g) shall result in the issuance of a Level 1 Civil Penalty. Receipts shall include:

(a) The retail facility address;

(b) The date of the transaction;

(c) The time of the transaction;

(d) The price per gallon of the motor fuel dispensed;

(e) The total volume of motor fuel dispensed;

(f) The identity of the product, by name, symbol or abbreviation; and

(g) The dispenser designation by either an alphabetical or numerical description.

(7) If the design, construction, or location of any storage tank is such as to require special equipment, accessories or access for use or motor fuel return, the equipment, accessories or access shall be supplied by the license holder.

Section 8. Sampling of Motor Fuel.

(1) Samples of motor fuel collected for testing shall be pumped, pulled, drawn, or otherwise procured in accordance with the most recent standard practice for the particular type, class and grade of the motor fuel, using a standard or method detailed in one of the following:

(a) ASTM D4057, "Standard Practice for Manual Sampling of Petroleum and Petroleum Products";

(b) ASTM D5842, "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement"; or

(c) ASTM D4306, "Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination."

(2) Only gasoline, gasoline-oxygenate blends and diesel fuel will be subject to random sampling.

(3) Samples of not more than one (1) gallon per grade, per source, per inspection may be collected from any distributor or retail facility without cost to the state. When the same type and grade of motor fuel from multiple storage tanks, which are not manifolded, is offered for sale at a retail facility a sample of each type and grade may be obtained.

(4) Where a motor fuel quality Notice of Violation has been issued, for complaint, random and department initiated inspection, the department will pay the cost of the laboratory analysis associated with an initial inspection and the first and second follow-up inspections, if required.

(a) The license holder will be responsible for payment of a percentage of the cost of each subsequent laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation. This includes a specification test that was not applicable at the time of the initial inspection but is applicable at the time of the subsequent inspection.

1. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the third follow-up inspection.

2. The license holder will be required to pay a fee equal to one-hundred (100) percent of the cost of the laboratory analysis for the fourth and any subsequent follow-up inspections.

3. Laboratory analysis fees must be paid by the license holder to the department prior to the follow-up inspection.

a. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601

(b) If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

Section 9. Enforcement.

(1) Any license holder found by the department to be in violation of KRS 363.900-363.908, this regulation or 302 KAR 79:012, shall receive a Notice of Violation by personal service or certified mail detailing the facts constituting the citation of the violation and the assessment of a fine, if applicable.

(a) Each Notice of Violation shall state the amount of the fine. Fine amounts will be determined in accordance with "Motor Fuel Quality Testing and Inspection Program Civil Penalty Guidelines" (Form KDA-OCEP-MF-01).

1. If a finding of the department results in the issuance of a Level 2, 3, 4, or 5 Civil Penalty, the assessed fine or order shall be afforded a case review upon written request.

2. If a finding of the department results in the issuance of any Level 1 Civil Penalty it shall be prima facie evidence of the fact or facts found therein; the fine amount shall constitute a final agency action and is therefore not subject to a case review.

(b) A follow-up inspection shall be conducted for every motor fuel quality violation resulting in a Level 2 Penalty and above.

(2) Operating without a retail motor fuel license is a violation of KRS 363.904 (1) which shall result in the placement of an administrative stop-sale order pursuant to a Level 6 Civil Penalty on all motor fuel offered for sale. The issuance of a citation for a violation of the statute shall be prima facie evidence of the fact or facts found therein. The administrative stop-sale order on all motor fuel offered for sale at the retail facility shall constitute a final agency action and is therefore not subject to a case review.

(a) A Level 6 Civil Penalty may be remediated by filing an application to obtain or renew a license.

(3) Remediation may be achieved, by removing and replacing or upgrading the motor fuel in storage to conform to minimum specifications for the particular type, class and grade; or otherwise addressing the cause of the violation.

(4) When a Notice of Violation or a Follow-up Failure has been issued, the license holder, within ten (10) consecutive day's receipt of the Notice:

(a) Shall provide remediation documentation to the department describing the corrective action taken to resolve the violation(s); or

1. If the license holder has not provided the department with documentation in writing by the expiration of the ten (10) consecutive days, the product(s) that were the subject of the violation(s), may be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty by the department.

(b) May request a case review, as provided in 302 KAR 79:011 (9) (1) (a) (1) of this section.

(5) The department shall obtain a follow-up sample from the retail facility for analysis within a period not to exceed three (3) business days, from receipt of remediation documentation as required in 302 KAR 79:011 (9) (4) (a).

(a) When the remediation action taken results in the downgrading of the posted automotive fuel rating, which is evidenced by photo documentation that complies with 302 KAR 79:011 (3) (1), a follow-up sample is not required.

(6) A Stop-Sale Order may be included with a Notice of Violation or Follow-up Failure Notification.

(a) If a motor fuel quality stop-sale order is issued, the product identified in the Notice of Violation shall be removed from sale to the consumer.

(b) Product(s) shall remain under a Stop-Sale Order until subsequent sampling and analysis by the department verifies its compliance.

(c) The department will notify the license holder of its decision to remove motor fuel quality stop-sale order within a period not to exceed three (3) business days upon receipt of analysis indicating conformance with the minimum specification for the particular type, class and grade of the motor fuel.

(7) The department may issue a motor fuel quality stop-sale order for any motor fuel not in compliance with this administrative regulation. The license holder shall be notified of the motor fuel quality stop-sale order.

(a) The motor fuel quality stop-sale order shall be in writing and contain an explanation of the violation(s).

(b) When the department has made a determination that a violation has been resolved, the motor fuel quality stop-sale order shall be removed.

(c) A motor fuel quality stop-sale order shall apply to the product for which sample analysis indicates a violation.

(d) The Motor Fuel Quality Stop-Sale Order shall extend to motor fuels blended from any products placed under a motor fuel quality stop-sale order.

(8) Irrespective of ownership, any stop-sale order shall remain in effect until remediation documentation, detailing the corrective action taken, has been received, in writing, from the li-

cense holder. Such products shall continue to remain under a stop-sale order until subsequent sampling and analysis by the department verify compliance with KRS 363.900 - 363.908 and this administrative regulation. If needed, the department may obtain a follow-up sample from the retail facility for analysis. This rule will survive if there is a change in licensure or ownership.

(9) The fine shall be paid within thirty (30) consecutive day's receipt of the Notice of Violation unless a case review is requested pursuant to 302 KAR 79:011(9) (1) (a) (1). Failure to pay a fine within thirty (30) consecutive day's receipt of the violation may result in an administrative stop-sale order being issued by the department.

(10) Declaration of non-sale. If the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance the license holder may remove a non-compliant motor fuel from sale to the consumer by obtaining a Declaration of Non-Sale. A Declaration of Non-Sale shall have the effect of a motor fuel quality stop-sale order on any retail motor fuel product to which it applies.

(a) A retail facility shall have a maximum of two (2) motor fuels subject to a declaration of non-sale at a time.

(b) If the fine associated with a motor fuel quality violation(s) has been paid, and the license holder is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may provide a "Declaration of Non-Sale" to the department, on Form KDA-OCEP-MF-04, stating that the retail facility will no longer offer for sale a specific type and grade of motor fuel.

1. A separate Declaration of Non-Sale shall be submitted for each type and grade of motor fuel.

2. Each Declaration of Non-Sale must be complete when submitted.

3. An incomplete Declaration of Non-Sale will not be accepted or certified.

4. The certified Declaration of Non-Sale shall be conspicuously displayed at the retail facility.

(c) If the fine associated with a motor fuel quality violation(s) has not been paid, and the license holder made a timely request for a case review and is unable to achieve, or elects not to achieve, motor fuel quality compliance, the license holder may be granted a "Temporary Declaration of Non-Sale", contingent upon payment of the fine which is the subject of the case review.

1. A Temporary Declaration of Non-Sale is subject to the requirements specified in 302 KAR 79:011(9) (10) (b) (1-4).

2. The case review shall be conducted in accordance with 302 KAR 79:011(10).

3. After the license holder pays the fine stated in a Final Agency Action, the license holder may provide a "Declaration of Non-Sale" to the department, on Form KDA-OCEP-MF-04, stating that the retail facility will no longer offer for sale a specific type and grade of motor fuel.

4. If the license holder fails to pay a fine stated in a Final Agency Action, within fifteen (15) consecutive days after the receipt of the Final Agency Action, the Temporary Declaration of Non-Sale will be revoked and the product(s) subject to may be placed under an Administrative Stop-Sale Order.

(d) Remediation. A Declaration of Non-Sale may be remediated by removing and replacing the affected motor fuel in storage and providing detailed documentation to the department of the corrective action taken.

1. The license holder under which the Declaration of Non-Sale was certified will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation.

a. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

b. The license holder will be required to pay a fee equal to one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

c. Remediation documentation and Laboratory analysis fees must be received by the department prior to the follow-up inspection.

i. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

d. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

2. When there has been a change in ownership and the license holder elects to achieve motor fuel quality compliance the license holder will be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 - 363.908 and this administrative regulation.

a. The department will pay the cost of the laboratory analysis associated with an initial inspection of remediation.

b. The license holder will be required to pay a fee equal to fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

c. The license holder will be required to pay a fee equal to one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

d. Corrective action documentation must be received by the department prior to inspection of remediation. Except for the initial inspection of remediation, laboratory analysis fees must be received by the department prior to the follow-up inspection.

e. Payment of fees must be in the form of a money order or cashier's check, made payable to Kentucky State Treasurer and mailed to the Kentucky Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601.

f. If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department will pay the cost of the additional testing.

(11) If a license holder fails to pay a fine stated in a Final Agency Action, within fifteen (15) consecutive day's receipt of the notice, the product(s) that were the subject of the violation(s), may be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty.

(12) Offering for sale a motor fuel product which has been placed under a Motor Fuel Quality Stop-Sale Order or which is subject to a Declaration of Non-Sale, shall be subject to a Level 5 Civil Penalty and fine.

(13) If a license holder offers motor fuel for sale in violation of an Administrative Stop-Sale Order pursuant to a Level 5 Civil Penalty, a fine will be assessed for each type, class and grade of fuel offered for sale.

(14) Each violation of the regulation shall be deemed a separate occurrence for the purpose of the Civil Penalty and Fine Assessment.

Section 10. case review and Appeal.

(1) A Level 1 Civil Penalty is not subject to a case review. A Level 1 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with 302 KAR 79:011 (11).

(2) A Level 6 Civil Penalty is not subject to a case review. A Level 6 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with 302 KAR 79:011 (11).

(3) A request for a case review shall be made in writing, within ten (10) consecutive days receipt of the department's Notice of Violation.

(4) A license holder may respond to a Notice of Violation, within ten (10) consecutive days of receipt of the department's notice, by requesting a case review or paying the assessed civil penalty. If no request for a case review is made within the ten (10) day period, then the Notice of Violation shall be deemed to be a "final order" for the purposes of KRS Chapter 13B.

(5) Upon receipt of a request, the department will notify the license holder of a case review date. If the license holder is experiencing financial hardship and requests a reduction in a fine amount, prior to the date of the case review, the license holder shall submit three (3) most recent bank statements or other relevant documentation. The license holder may also submit, prior to the case review date, documentation detailing corrective action and cost incurred.

(6) Case reviews shall be heard by an administrative panel consisting of five (5) members which shall be designated by the department.

(a) Five (5) members present shall constitute a quorum.

(b) The panel shall include at least one (1) person who is not affiliated with the motor fuel program.

(7) The members of the administrative panel shall not be required to accept or consider information or documents that were not received at least three (3) business days prior to the case review date.

(8) A license holder may appear before the administrative panel either in person or via telephonic conference. A case review must be requested and scheduled in advance.

(9) Using the "Designation of Proxy for Case Review", (Form KDA-OCEP-MF-03), a license holder may designate a proxy to appear as its representative before the administrative panel. Although it is not required, a license holder may designate legal counsel to represent them. The form for proxy representation must be notarized and submitted at least three (3) business days prior to a case review. Nothing in this subsection should be construed as authorizing the unlicensed practice of law.

(10) A license holder may request to reschedule a case review for good cause.

(a) The request to reschedule must be submitted to the department in writing.

(b) The request to reschedule must be received at least seven (7) consecutive days prior to the case review date.

(11) The administrative panel may consider the degree and extent of harm caused by the violation(s), the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation(s), whether the violation(s) was committed willfully, and the compliance record of the license holder when determining the fine's recalculation.

(a) The administrative panel shall document its review using the "Motor Fuel Administrative Case Review Guidelines", (Form KDA-OCEP-MF-02).

(12) Failure of a license holder to attend a scheduled case review will result in a determination by default and the department shall issue a final agency action stating that the violation(s) and fine assessed remain as originally issued.

(13) If a license holder fails to pay a fine stated in a Final Agency Action, within fifteen (15) consecutive days after the receipt of the Final Agency Action, the product(s) that were the subject of the violation(s), may be placed under an Administrative Stop-Sale Order by the department.

(14) Within ten (10) consecutive day's receipt of notice, a Formal Administrative Hearing may be requested to appeal the decision in a Final Agency Action.

Section 10. Formal Administrative Hearing.

(1) A final agency action shall be subject to a Formal Administrative Hearing to be conducted in accordance with KRS Chapter 13B.

(2) Upon receipt of a final agency action an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's action.

(3) A request for a Formal Administrative Hearing shall be in writing.

(4) A request for a Formal Administrative Hearing shall state the reason(s) the aggrieved party believes the departments' action was erroneous.

(5) A request for a Formal Administrative Hearing shall be submitted to the Department of Agriculture, Office of Legal Services, 107 Corporate Drive, Second Floor, Frankfort, Kentucky 40601, within ten (10) days after the final agency action is received.

Section 12. Civil Penalties.

Failure to comply with this administrative regulation may result in the combination of any of the following:

(1) The issuance of a Notice of Violation(s);

(2) The assessment of a fine;

(3) The issuance of an Administrative Stop-Sale Order;

(4) The issuance of a Motor Fuel Quality Stop-Sale Order; or

(5) The placement of an Administrative Stop-Sale Order on all motor fuel offered for sale at the retail facility.

Section 13. Consumer Motor Fuel Quality Complaints.

(1) Any person wishing to make a complaint about a deficiency in the quality of a motor fuel that was purchased within the Commonwealth shall file, not later than fourteen (14) consecutive days after the date of the complainant purchase of that motor fuel from the retail facility, a written complaint to the department identifying the following information:

(a) The name and contact information for the complainant;

(b) The name and street address of the retail facility where the motor fuel was purchased and the dispenser number, if known;

(c) The type of motor fuel that was purchased;

(d) The grade of the motor fuel that was purchased; and

(e) A description of the deficiency.

(2) The department shall not be required to investigate complaints meeting one (1) or more of the following:

(a) The complaint was submitted to the department more than fourteen (14) consecutive days after the date of the complainant purchase from the retail facility;

(b) The complainant is unable to specifically identify the retail facility which is the source of the motor fuel that is the subject of the complaint;

(c) The department has reason to believe that repeated complaints regarding the same retail facility are intended to unduly penalize the retail facility or to disrupt the essential functions of the department.

(d) The complainant is not the owner of the vehicle or equipment damaged, the person who purchased the motor fuel or a member of that person's immediate family;

(e) The complaint is determined by the department to relate to a topic other than the quality of a motor fuel; or

(f) The motor fuel referenced in the complaint is not present in the storage tank(s) when the department arrives to conduct an investigation.

Section 14. Incorporated by Reference

(1) The following material is incorporated by reference:

(a) "16 C.F.R. 306 - Automotive Fuel Ratings, Certification and Posting", (2012);

- (b) "16 C.F.R. 309 - Labeling Requirements for Alternative Fuels", (2003);
 - (c) "40 C.F.R. 80.41- Reformulated Gasoline Standards and Requirements for Compliance", (2007);
 - (d) "40 C.F.R. 80.1501- Labeling Requirements that Apply to Retailers and Wholesale Purchaser-Consumers of Gasoline-Ethanol Blends that Contain Greater than 10 Volume Percent Ethanol and Not More than 15 Volume Percent Ethanol", (2014);
 - (e) "API Recommended Practice" 1637; 4th Edition, (April 2020), Using the API Color-Symbol System to Identify Equipment, Vehicles, and Transfer Points for Petroleum Fuels and Related Products at Dispensing Facilities and Distribution Terminals.
 - (f) "ASTM Standard D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products", (2019);
 - (g) "ASTM Standard D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination", (2020);
 - (h) "ASTM Standard D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement", (2019);
 - (i) "Form KDA-OCEP-MF-01, Motor Fuel Inspection and Testing Civil Penalty Guidelines", (November 2020 Edition);
 - (j) "Form KDA-OCEP-MF-02, Motor Fuel Administrative Case Review Guidelines", (November 2020 Edition);
 - (k) "Form KDA-OCEP-MF-03, Designation of Proxy for Case Review", (November 2020 Edition); and
 - (l) "Form KDA-OCEP-MF-04, Declaration of Non-Sale", (November 2020 Edition).
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the office of the Department of Agriculture, Division of Regulation and Inspection, 107 Corporate Drive, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.

RYAN F. QUARLES, Commissioner

APPROVED BY AGENCY: November 12, 2020

FILED WITH LRC: November 13, 2020 at 11:24 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021 at 11:00 a.m., at the Kentucky Department of Agriculture, 111 Corporate Drive, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through January 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Clint Quarles, Staff Attorney, Kentucky Department of Agriculture, 107 Corporate Drive, Frankfort Kentucky 40601, phone (502) 330-6360, fax (502) 564-2133, email clint.quarles@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Clint Quarles

- (1) Provide a brief summary of:

(a) What this administrative regulation does: The proposed rule will permit a wider range of "alternative" fuels and require those fuels to meet specified standards. Additionally, the proposed rule will require that a person who sells and distributes automotive fuels, including "alternative" fuels, to make certain disclosures, and that retailers of automotive fuels, including "alternative" fuels, must post certain information, in connection with the sale thereof.

(b) The necessity of this administrative regulation: This administrative regulation adopts rules that set forth standards relating to motor fuel quality, specifications, and sampling and testing methods.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 363.902 directs the Commissioner of Agriculture, or his authorized agent, to implement and administer an inspection and testing program for motor fuels to ensure compliance with KRS 363.900 to 363.908. KRS 363.902 instructs that the standards set forth in the annual book of ASTM standards, supplements, and revisions shall be applied; and further that the department shall conform to any provisions of federal law or regulations which impose requirements in conflict with the ASTM standard.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the implementation of the statutes by modernizing language and creating clear guidance for motor fuel regulation in Kentucky.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Kentucky Department of Agriculture, 2,800 retailers and possibly another 100 entities that are involved in the fueling industry.

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: Refiners, producers and distributors of motor fuels will benefit by adoption of the proposed amendment in that they will be allowed to offer new fuels, some or all of which may prove popular with consumers.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: \$700,000

(b) On a continuing basis: \$700,000

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation? License Fees, General Fund

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment? No increase in fee amount is included. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The fee amount is in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(9) TIERING: Is tiering applied? No. All regulated entities have the same requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? Kentucky Department of Agriculture shall be affected by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No income will be generated by this filing. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? No income will be generated by this filing. The fee is set forth in statute. However, the retailer could be responsible for additional testing costs in a noncompliance scenario.

(c) How much will it cost to administer this program for the first year? 2019 program costs were \$50,000 for staff for the motor fuel program.

(d) How much will it cost to administer this program for subsequent years? The KDA expects this spending trendline to continue for the motor fuel program as a whole.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Fees generated by participants are established in statute. Approximately \$150,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were \$700,000 for staff for the motor fuel program.

Other Explanation: