

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

302 KAR 79:012. Motor fuel quality standards and specifications.

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 motor fuel quality standards and specifications.

Section 1. Motor Fuel Quality Standards and Specifications.

(1) When no standard exists, the department shall designate a test or specification based upon the most widely accepted scientific principles.

(2) If it is demonstrated that some impurity or imperfection exists in a motor fuel product offered for sale that renders it unfit for its intended purposes, the product may be subject to a Level 4 Civil Penalty.

(3) These requirements will not apply to any bulk fuel storage tanks where the product contained therein is being reconditioned and withheld from sale.

(4) Motor fuel containing less than one (1) percent by volume oxygenate, not dispensed from a dedicated hose shall be subject to a Level 2 Civil Penalty.

(5) Gasoline and gasoline-oxygenate blends containing between zero (0) and up to fifteen (15) volume percent ethanol shall meet the following requirements:

(a) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "premium" or "super" gasoline blends unless its AKI is greater than or equal to ninety-one (91).

(b) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless its AKI is greater than or equal to eighty-nine (89).

(c) Gasoline and gasoline-oxygenate blends shall not be offered for retail sale under the name "regular" gasoline unless its AKI is greater than or equal to eighty-six (86).

(d) Pursuant to KRS 363.902 (2), gasoline and gasoline-oxygenate blends offered for sale at a retail facility shall conform to the most recent version of ASTM D4814, "Standard Specification for Automotive Spark Ignition Engine Fuel," with the following exceptions, as required by KRS 363.904 (2):

1. For gasoline-ethanol blends containing between one (1) percent by volume and fifteen (15) percent ethanol by volume, the ASTM International V/L ratio specification shall be waived.

2. For gasoline-ethanol blends containing between nine (9) percent and fifteen (15) percent by volume ethanol, the RVP shall be increased by one (1) pound per square inch.

(e) The maximum concentration of oxygenates permitted in gasoline-oxygenate blends shall be those permitted by the EPA under section 211 of the Clean Air Act and applicable waivers, as set forth in the published version of the NIST Handbook 130 for Gasoline and Gasoline-Oxygenate Blends and for Gasoline-Ethanol blends.

(f) For gasoline and gasoline-oxygenate blends the Motor Octane Number (MON) shall not be less than eighty-two (82).

(6) Mid-level ethanol flex fuel blends containing between sixteen (16) and fifty (50) percent ethanol by volume, shall meet the latest version of ASTM D7794, "Standard Practice for Blending Mid-Level Ethanol Fuel blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines"; and

(7) Ethanol flex fuel blends containing between fifty-one (51) and eighty-three (83) percent ethanol by volume shall be blended, stored, and conveyed for consumption in accordance with the latest version of ASTM D5798, "Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines."

(8) M-85 Fuel Methanol shall meet the requirements set forth in the most recent version of ASTM D5797, "Standard Specification for Fuel Methanol M51-M85 for Automotive Spark-Ignition Engines."

(9) Diesel fuel that contains not more than five (5) percent by volume biodiesel or biomass-Based diesel shall meet the requirements set forth in the latest version of ASTM D975, "Standard Specification for Diesel Fuel."

(10) All diesel fuels identified on retail dispensers and product transfer documentation with terms such as "premium," "super," "supreme," "plus," or "premier" shall meet the requirements set forth in the published version of the NIST Handbook 130 for Premium Diesel Fuel.

(11) Diesel fuel that contains biodiesel between six (6) percent and twenty (20) percent, by volume, shall meet the requirements set forth in the latest version of ASTM D7467, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)."

(12) Biodiesel fuel blend stock intended for blending with diesel fuel shall meet the requirements set forth in the most recent version of ASTM D6751, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels."

(a) Biodiesel fuel blend stock shall be at least ninety-nine (99) percent biodiesel but no more than one (1) percent diesel fuel by volume.

(b) Biodiesel fuel blend stock with less than ninety-nine (99) percent biodiesel shall not be used as a commercial blend stock for biodiesel blends without written approval from the department.

(13) Aviation turbine fuels shall meet the requirements set forth in the most recent version of the following standards, as applicable:

(a) ASTM D1655, "Standard Specification for Aviation Turbine Fuels;"

(b) ASTM D7223, "Standard Specification for Aviation Certification Turbine Fuel;"

(c) ASTM D7566, "Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons;" and

(d) ASTM D6615, "Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel."

(14) Aviation gasoline shall meet the most recent version of the following standards, as applicable:

(a) ASTM D910, "Standard Specification for Leaded Aviation Gasoline";

(b) ASTM D6227, "Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component"; and

(c) ASTM D7547, "Standard Specification for Unleaded Only Aviation Gasoline."

(15) Liquefied petroleum gases intended for use as motor fuel shall meet the requirements set forth in the most recent version of ASTM D1835, "Standard Specification for Liquefied Petroleum (LP) Gases."

(16) Racing Gasoline shall meet the requirements set forth in the gasoline manufacturer's product specifications. Upon the request of the department, each conveyor of racing gasoline shall provide the department with a copy of the manufacturer's product specifications.

(17) Hydrogen fuel for fuel cell vehicles shall meet the requirements set forth in the most recent edition of SAE J2719 "Hydrogen Fuel Quality for Fuel Cell Vehicles." At such time that ASTM International develops applicable standards for Hydrogen Fuel Quality, those standards shall prevail as rule.

(18) Compressed natural gas shall meet the requirements set forth in the most recent edition of SAE J1616, "Recommended Practice for Compressed Natural Gas Vehicle Fuel." At

such time that ASTM International develops applicable standards for compressed natural gas, those standards shall prevail as rule.

(19) LNG vehicle fuel shall meet the requirements set forth in the most recent edition of SAE J2699 "Liquefied Natural Gas Vehicle Fuel." At such time that ASTM International develops applicable standards for LNG vehicle fuels, those standards shall prevail as rule.

Section 2. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) "ASTM Standard D910-20a, (ASTM D910), Standard Specification for Leaded Aviation Gasolines", (2020);

(b) "ASTM Standard D975-20c, (ASTM D975), Standard Specification for Diesel Fuel", (2020);

(c) "ASTM Standard D1655-20c, (ASTM D1655), Standard Specification for Aviation Turbine Fuels", (2020);

(d) "ASTM Standard D1835-20, (ASTM D1835), Standard Specification for Liquefied Petroleum (LP) Gases", (2020);

(e) "ASTM Standard D4806-20, (ASTM D4806), Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark Ignition Engine Fuel", (2020);

(f) "ASTM Standard D4814-20a (ASTM D4814), Standard Specification for Automotive Spark Ignition Engine Fuel", (2020);

(g) "ASTM Standard D5797-18, (ASTM D5797), Standard Specification for Methanol Fuel Blends (M51–M85) for Methanol-Capable Automotive Spark-Ignition Engines", (2018);

(h) "ASTM Standard D5798-20, (ASTM D5798), Standard Specification for Ethanol Fuel Blends for Flexible-Fuel Automotive Spark-Ignition Engines", (2020);

(i) "ASTM Standard D6227-18, (ASTM D6227), Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component", (2018);

(j) "ASTM Standard D6615-15a, (ASTM D6615), Standard Specification for Jet B Wide-Cut Aviation Turbine Fuel", (2019);

(k) "ASTM Standard D6751-20a, (ASTM D6751), Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels", (2020);

(l) "ASTM Standard D7223-17, (ASTM D7223), Standard Specification for Aviation Certification Turbine Fuel", (2017);

(m) "ASTM Standard D7467-20a, (ASTM D7467), Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6 to B20)", (2020);

(n) "ASTM Standard D7547-18a, (ASTM D7547), Standard Specification for Hydrocarbon Unleaded Aviation Gasoline", (2018);

(o) "ASTM Standard D7566-20b, (ASTM D7566), Standard Specification for Aviation Turbine Fuel Containing Synthesized Hydrocarbons", (2020);

(p) "ASTM Standard D7794-20, (ASTM D7794), Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible-Fuel Vehicles with Automotive Spark-Ignition Engines", (2020);

(q) "ASTM Standard D7901-20, (ASTM D7901), Standard Specification for Dimethyl Ether for Fuel Purposes", (2020);

(r) "National Institute of Standards and Technology Handbook 130, 2020 Edition Natl. Inst. Stand. Technol. Handb. 130, 2020 Ed., Uniform Fuels and Automotive Lubricants Regulation, IV, G, §2; (Nov. 2019)"

(s) "SAE J1616-201703, Standard for Compressed Natural Gas Vehicle Fuel, Society of Automotive Engineers International", (2017);

(t) "SAE J2699-201802, Liquefied Natural Gas (LNG) Vehicle Fuel, Society of Automotive Engineers International", (2018); and

(u) "SAE J2719-202003, Hydrogen Fuel Quality for Fuel Cell Vehicles, Society of Automotive Engineers International," (2020).

(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, Staff Attorney

(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 \$700,000 in revenue was collected last year.

Expenditures (+/-): 2019 program costs were \$150,000 for staff for the motor fuel program.

Other Explanation: