

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

RELATES TO: KRS 363.900 - 363.908, 42 U.S.C. 7545(o)(1)(D), 16 C.F.R. 306.12, 40 C.F.R. 80.27

STATUTORY AUTHORITY: KRS 363.902, 363.908, 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) "Administrative Stop-Sale Order" means a motor fuel product is ordered removed from sale to the consumer due to a violation not related to motor fuel quality standards and specifications.
- (2) "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.
- (3) "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.
- (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 can contain fuel additives.
- (9) "Biomass-based diesel" means a diesel fuel substitute produced or co-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) "Distributor" means any carrier or supplier that 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.
- (11) "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.
- (12) "EPA" means the United States Environmental Protection Agency.

(13) "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; this includes gasoline-ethanol blends containing between one (1) and fifteen (15) percent ethanol by volume.

(14) "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.

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

(16) "License holder" means the person, owner, or 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.

(17) "Manifolded" means a piping connection between two (2) or more tanks that allows fuel to freely flow from one tank to another thus drawing product from multiple tanks.

(18) "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.

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

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

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

(22) "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 the minimum requirements of the NIST Handbook 130 Uniform Engine Fuels and Automotive Lubricants Regulation, §2.2.1 for Premium Diesel Fuel.

(23) "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 established in this administrative regulation, that shall accompany a shipment of motor fuel.

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

(25) "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 distinguishes its evaporation characteristics.

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

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

Section 2. Licensing and Renewal.

(1)

(a) A person shall not offer for sale retail motor fuel to consumers without first obtaining a license from the department.

(b) Operating a retail facility without a retail motor fuel license 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.

- (2) Each retail facility motor fuel license shall be effective from the date of issuance until January 31 of the following calendar year.
- (3) After January 31, 2023, the department shall provide the ability to apply for or renew retail motor fuel licenses online.
 - (a) Paper applications and payments shall no longer be accepted after January 31, 2023.
 - (b) Paper applications and payments submitted after January 31, 2023 shall not be processed.
- (4) A valid retail motor fuel license shall be conspicuously displayed at the retail facility.
- (5) A retail motor fuel license shall be non-transferable.
- (6) A retail motor fuel license shall not be issued without an application having been first submitted.
 - (a) An application shall be complete upon submission to the department. An incomplete application shall not be processed.
 - (b) Payment shall be by 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; or debit or credit through the department's online portal.
 - (c) An application without payment shall not be processed.
 - (d) Payments received without a completed application shall 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, including any motor fuel subject to a Declaration of Non-Sale, as established in Section 9(10) of this administrative regulation..
 - (f) The license holder shall confirm that all retail dispensing devices used for retail sales shall comply with 302 KAR 81:010.
- (7) Unpaid fines assessed under the Motor Fuel Quality Testing and Inspection Program shall be grounds for the denial of license issuance.
- (8) A license holder shall not offer for sale a new motor fuel, or a motor fuel not established 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 any of the following events:
 - (a) The Retail Facility closes;
 - (b) The License Holder information changes;
 - (c) A license holder intends to permanently modify motor fuel products offered for sale or storage tank allocation; or
 - (d) 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)
 - (a) 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.
 - (b) At least one (1) label on the face of the dispenser shall identify the octane rating.
 - (c) 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 shall meet or exceed the certification on the product transfer documentation.

(5)

(a) 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.

(b) The label shall not contain the following: "100 %" or "pure gasoline."

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

(7) Gasoline-ethanol blends containing 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. 1090.1510.

(8) No later than January 31, 2023, the selector identifying Ethanol Flex Fuels containing at least fifty-one (51) percent and no greater than eighty-three (83) percent ethanol by volume shall be labeled as either:

(a) "Ethanol Flex Fuel";

(b) "E-85";

(c) The numerical value representing the percentage by volume ethanol in the fuel, rounded to the nearest multiple of ten (10), followed by the percentage sign followed by the term "Ethanol";

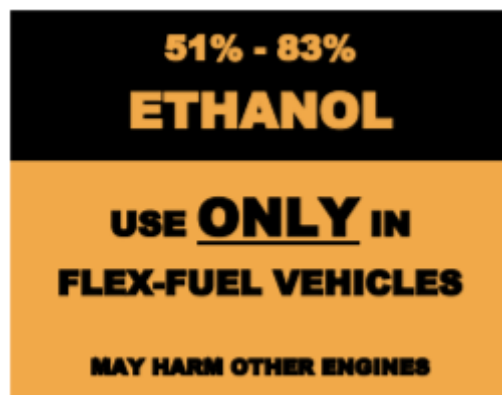
(d) The phrase, "Contains 51% - 83% Ethanol"; or

(e) Containing the requirements of 16 C.F.R. 306.12 (4).

1. In addition to the requirements of paragraphs (a) through (d) of this subsection, an additional label, meeting the requirements of 16 C.F.R. 306.12 (4), shall be in a prominent place, as close to the selector as practical.

2. The label shall be positioned to clearly identify which control the consumer will use to select the Ethanol Flex Fuel.

3. Illustrations of Ethanol Flex Fuel labels. Labels shall meet the specifications in this section and shall look like these examples, except the black print shall be on the appropriately colored orange background and the knock-out print within the black band shall be orange.





(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) A racing gasoline label shall display an AKI that meets or exceeds the certification 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, the product 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, if 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 subject to a Declaration of Non-Sale.

Section 5. Product Transfer Documentation.

- (1) The requirements of this section shall 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 Section 7(2)(b) of this administrative regulation, each license holder selling motor fuel shall retain product transfer documentation for each grade at the location where the motor fuel is transferred for at least the last five (5) deliveries.
- (5) The license holder shall make available to the department upon request product transfer documentation that shall state for each type and grade of motor fuel, the:
 - (a) Type of motor fuel being transferred;
 - (b) Automotive fuel rating of the motor fuel being transferred;
 - (c) Name and address of the transferor;
 - (d) Name and address of the transferee;
 - (e) Volume of motor fuel being transferred; and
 - (f) Date of the transfer.
- (6) Product transfer documentation shall include:
 - (a) For gasoline, the statement "The RVP does not exceed {fill in appropriate value} psi";
 - (b) For gasoline containing no oxygenate, the statement, "Contains no oxygenate";
 - (c) For gasoline blended with ethanol in concentration of at least one (1) percent by volume in the motor fuel:
 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"; and
 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"; and
 - (d) For gasoline blended with an oxygenate other than ethanol, a statement declaring the name and percentage by volume of any oxygenate or combination of oxygenates present.
- (7) Product transfer documentation pertaining to mid-level ethanol flex fuel and ethanol flex fuel blends, shall be represented by the numerical value representing the percentage by volume 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 percentage by volume ethanol in the fuel, shall 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-one (51) percent and no greater than eighty-three (83) percent by volume of ethanol, the numerical value representing the percentage by volume ethanol in the fuel, shall 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) Diesel fuel blended with more than five (5) percent by volume biomass-based diesel or biodiesel shall include, a disclosure of the biomass-based diesel or biodiesel

component, expressed as the percentage by volume in the product transfer documentation. Diesel fuel shall also include a statement declaring the grade as either "No.1-D" or "No. 2-D".

(9) Product transfer documentation pertaining to premium diesel shall be so identified.

(10) Biodiesel blend stock shall be identified by the letter "B" followed by the numerical value representing the percentage by volume of biodiesel either "B-99" or "B-100", followed by the term "Biodiesel Blend Stock".

(11) 100% Biomass-Based diesel shall be identified by the phrase, "Contains 100% Biomass-Based diesel".

(12) 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) 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 established in this administrative regulation.

Section 7. Inspection of Premises.

(1) The department's inspector shall present agency 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 if 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 shall 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 has been removed from sale.

(b) A license holder shall be exempt from 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 paragraphs (a) through (f) of this subsection shall result in the issuance of a Level 1 Civil Penalty. Receipts shall include:

(a) Retail facility address;

(b) Date of the transaction;

(c) Price per gallon of the motor fuel dispensed;

- (d) Total volume of motor fuel dispensed;
 - (e) Identity of the product by name, symbol, or abbreviation; and
 - (f) 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 (1) of the following:
- (a) ASTM D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products;
 - (b) ASTM D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement; or
 - (c) ASTM D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination.
- (2) Only gasoline, gasoline-oxygenate blends, and diesel fuel shall be subject to random sampling.
- (3) Samples of not more than one (1) gallon per grade, per source, per inspection shall be collected from any distributor or retail facility without cost to the state. If 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 shall be obtained.
- (4) If a motor fuel quality Notice of Violation has been issued because of a complaint or random or department-initiated inspection, the department shall 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 shall 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 shall be required to pay fifty (50) percent of the cost of the laboratory analysis for the third follow-up inspection.
 - 2. The license holder shall be required to pay one-hundred (100) percent of the cost of the laboratory analysis for the fourth and any subsequent follow-up inspections.
 - 3. Laboratory analysis costs shall be paid by the license holder to the department prior to the follow-up inspection.
 - 4. Payment of costs shall 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; or debit or credit through the department's online portal.
 - (b) If the department determines that a test, not performed in a previous laboratory analysis, is necessary the department shall 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 administrative 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 shall 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, and the fine amount shall constitute a Final Agency Action and shall not be 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)
 - (a) Operating without a retail motor fuel license shall be 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 shall not be subject to a case review.
 - (b) A Level 6 Civil Penalty may be remediated by filing an application to obtain or renew a license.
- (3) Remediation options may include 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) If 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)
 1. Shall provide remediation documentation to the department describing the corrective action taken to resolve the violation; or
 2. If the license holder has not provided the department with documentation in writing by the expiration of the ten (10) consecutive days, the product that was the subject of the violation shall be subject to an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty by the department; or
 - (b) May request a case review, as provided in Section 9(1)(a)1. of this administrative regulation.
- (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 Section 9(4)(a) of this administrative regulation. If the remediation action taken results in the downgrading of the posted automotive fuel rating, which is evidenced by photo documentation that complies with Section 3(1) of this administrative regulation, a follow-up sample shall not be required.
- (6) An Administrative Stop-Sale Order or a Motor Fuel Quality 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) A product shall remain under a Motor Fuel Quality Stop-Sale Order until subsequent sampling and analysis by the department verifies its compliance.
 - (c) The department shall 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) Motor fuel not in compliance with this administrative regulation shall be subject to a Motor Fuel Quality Stop-Sale Order. 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.
 - (b) The department shall notify the licensee of analytical test results not later than the first business date following the department's receipt of results from the testing laboratory.
 - (c) If the department has made a determination that a violation has been resolved, the Motor Fuel Quality Stop-Sale Order shall be removed.
 - (d) A Motor Fuel Quality Stop-Sale Order shall apply to the product for which sample analysis indicates a violation.
 - (e) The Motor Fuel Quality Stop-Sale Order shall extend to motor fuels blended from any product placed under a Motor Fuel Quality Stop-Sale Order.
- (8) Irrespective of ownership, any Motor Fuel Quality Stop-Sale Order shall remain in effect until remediation documentation, detailing the corrective action taken, has been received, in writing, from the license holder. A product shall continue to remain under a Motor Fuel Quality Stop-Sale Order until subsequent sampling and analysis by the department verifies 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 requirement shall remain in effect 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 Section 9(1)(a)1. of this administrative regulation. Failure to pay a fine within thirty (30) consecutive day's receipt of the violation shall be subject to 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 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 notarized Declaration of Non-Sale to the department, on Form KDA-OCEP-MF-04, stating that the retail facility shall 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 shall be complete upon submission.
 - 3. An incomplete Declaration of Non-Sale shall 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 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 that is the subject of the case review.
 - 1. A Temporary Declaration of Non-Sale is subject to the requirements established in Section 9(10)(b)1. through 4. of this administrative regulation.
 - 2. The case review shall be conducted in accordance with Section 10 of this administrative regulation.

3. After the license holder pays the fine stated in a Notice of Final Agency Action, the license holder may provide a notarized Declaration of Non-Sale to the department, on Form KDA-OCEP-MF-04, stating that the retail facility shall 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 Notice of Final Agency Action within fifteen (15) consecutive days after the receipt of the Notice, the Temporary Declaration of Non-Sale shall be revoked and the product shall 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 shall be responsible for payment of a percentage of the cost of each laboratory analysis needed to verify compliance with KRS 363.900 through 363.908 and this administrative regulation.

a. The license holder shall pay fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

b. The license holder shall pay 100 percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

c. Remediation documentation and laboratory analysis costs shall be received by the department prior to the follow-up inspection.

d. Payment of costs shall 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; or debit or credit through the department's online portal.

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

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

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

b. The license holder shall pay fifty (50) percent of the cost of the laboratory analysis for the first inspection of remediation.

c. The license holder shall pay one-hundred (100) percent of the cost of the laboratory analysis for the second and any subsequent inspections of remediation.

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

e. Payment of costs shall 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; or debit or credit through the department's online portal.

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

(11) If a license holder fails to pay a fine stated in a Notice of Final Agency Action, within fifteen (15) consecutive day's receipt of the Notice, the product that was the

subject of the violation shall be placed under an Administrative Stop-Sale Order and subject to a Level 5 Civil Penalty.

(12) Offering for sale a motor fuel product that has been placed under a Motor Fuel Quality Stop-Sale Order or that 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 shall be assessed for each type, class, and grade of fuel offered for sale.

(14) Each violation of this administrative 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 shall not be subject to a case review. A Level 1 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with Section 11 of this administrative regulation.

(2) A Level 6 Civil Penalty shall not be subject to a case review. A Level 6 Civil Penalty may be appealed to the Office of the Attorney General, in accordance with Section 11 of this administrative regulation.

(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 shall 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 who 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 shall be requested and scheduled in advance.

(9) Using the notarized Notice for 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. The form for proxy representation shall be notarized and submitted at least three (3) business days prior to a case review. Nothing in this subsection shall 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 shall be submitted to the department in writing.

(b) The request to reschedule shall 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, the cost of rectifying the noncompliance, the amount of financial benefit derived from the violation, whether the violation was committed willfully, and the compliance record of the license holder for determining the fine's recalculation. 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 shall result in a determination by default and the department shall issue a Notice of Final Agency Action stating that the violation and fine assessed remain as originally issued.

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

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

Section 11. 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 Notice of 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 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 Notice of Final Agency Action is received.

Section 12. Civil Penalties. Failure to comply with this administrative regulation may result in a combination of:

(1) Issuance of a Notice of Violation;

(2) Assessment of a fine;

(3) Issuance of an Administrative Stop-Sale Order;

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

(5) 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 including:

(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 that 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 no longer present when the department arrives to conduct an investigation.

Section 14. Incorporated by Reference.

- (1) The following material is incorporated by reference:

- (a) "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;
- (b) "ASTM Standard D4057-19, Standard Practice for Manual Sampling of Petroleum and Petroleum Products", (2019);
- (c) "ASTM Standard D4306-20, Standard Practice for Aviation Fuel Sample Containers for Test Affected by Trace Contamination", (2020);
- (d) "ASTM Standard D5842-19, Standard Practice for Sampling and Handling of Fuels for Volatility Measurement", (2019);
- (e) "Form KDA-OCEP-MF-01, Motor Fuel Inspection and Testing Civil Penalty Guidelines", (April 2021 Edition);
- (f) "Form KDA-OCEP-MF-02, Motor Fuel Administrative Case Review Guidelines", (April 2021 Edition);
- (g) "Form KDA-OCEP-MF-03, Notice of Designation of Proxy for Case Review", (April 2021 Edition);
- (h) "Form KDA-OCEP-MF-04, Declaration of Non-Sale", (April 2021 Edition); and
- (i) "Form KDA-OCEP-MF-05, Application for Motor Fuel License", April 2021.

- (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.

(47 Ky.R. 1314, 2014, 2360; eff. 7-8-2021.)