

302 KAR 79:010. 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. 306.12, 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) "Distributor" means any person who transports, stores, or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer facility.
- (2) "Gasoline-oxygenate blend" means a fuel consisting primarily of gasoline with a substantial amount of one (1) or more oxygenates added.
- (3) "Octane rating" means the rating of the antiknock characteristic of a grade or type of gasoline which is determined by taking the average of the sum of the research octane number and the motor octane number.

Section 2. Administration. The Division of Regulation and Inspection, Kentucky Department of Agriculture shall administer the Motor Fuels Inspection and Testing Program pursuant to KRS 363.900-908.

Section 3. Standard Specifications.

- (1) Pursuant to KRS 363.902(2), Gasoline offered for sale at a retail facility shall conform to current ASTM D-4814 specifications, with the following exceptions:
 - (a) Distillation range (ASTM D-86) of gasoline containing up to ten (10) percent ethanol shall be the same as specified for gasoline except the minimum temperature at fifty (50) percent evaporated shall be 150 degrees Fahrenheit (sixty-six (66) degrees Celsius). For gasoline containing up to ten (10) percent ethanol, the vapor pressure limit for each class shall be increased by one (1) pound per square inch and the ASTM V/L (vapor to liquid ratio) specification is waived as required by KRS 363.904(1)(b)2.
 - (b) For the periods from May 1 through September 15, the concentration of ethanol shall be at least nine (9) percent and no more than ten (10) percent by volume of the gasoline to qualify for the increased vapor pressure allowance.
- (2) The test methods used to determine the standards of fuel quality shall conform to ASTM D-4814.
- (3) Samples of motor fuels obtained for testing shall be obtained in a manner consistent with ASTM D-4814.
- (4) Gasoline shall not be offered for retail sale under the name "premium" or "super" gasoline unless the antiknock octane index is greater than or equal to ninety-one (91) antiknock octane index.
- (5) Gasoline shall not be offered for retail sale under the name "plus" or "mid-grade" gasoline unless the antiknock octane index is greater than or equal to eighty-nine (89).
- (6) Gasoline shall not be offered for retail sale under the name "regular" gasoline unless the antiknock octane index is greater than or equal to eight-six (86).

Section 4. General Considerations.

- (1) Gasoline, diesel fuel, and gasoline-oxygenate blends sold in Kentucky shall state on either the bill of lading or invoice the following:
 - (a) The name of the person transferring the motor fuel;
 - (b) The name of the person to whom the motor fuel is being transferred;
 - (c) The date of the transfer;
 - (d) The octane rating, if the motor fuel is gasoline or a gasoline oxygenate blend; and

- (e) A declaration of any oxygenate or combination of oxygenates present in concentration of at least one (1) percent by volume in the motor fuel.
- (2) Each retail facility selling motor fuel shall retain the bills of lading or invoices at the location to which the motor fuel is transferred for a period of not less than thirty (30) days. If a person sells motor fuels at more than one (1) location, the bills of lading or invoices may be retained at a central location, if the bills of lading or invoices are made available to the department upon request.
- (3) Retail dispensing devices.
 - (a) All retail dispensing devices shall post the octane rating of all gasoline sold to consumers. At least one (1) label on each face of the dispenser shall identify the octane rating. If two (2) or more gasolines with different octane ratings are sold from a single dispenser, separate labels for each octane rating shall be placed on the face of the dispenser.
 - (b) The label, or labels, shall be placed conspicuously on the dispenser and be in full view of consumers. The label, or labels, shall also be placed as near as reasonably practical to the price of the gasoline.
 - (c) The label showing the minimum octane rating shall meet the same specifications as required under 16 C.F.R. Part 306.12.

Section 5. Diesel Fuel.

- (1) Pursuant to KRS 363.902(2), diesel fuel offered for sale at a retail facility for use as a motor fuel shall conform to current ASTM D-975 specifications.
- (2) Each retail dispenser dispensing diesel fuel to be used as a motor fuel shall be labeled with a name or grade containing the word "diesel". The labeling shall be placed conspicuously on the dispenser and be in full view of consumers.

Section 6. Product Storage Identification. The fill connection for any petroleum product storage tank or vessel at the retail level shall be permanently, plainly, and visibly marked in accordance with the American Petroleum Institute color codes as specified and published in the API Recommended Practice 1637.

Section 7. Inspection of Premises.

- (1) The department shall have access during normal business hours to all distributor and retailer records relating to the distribution or sale of motor fuel.
- (2) The department shall have access to all motor fuel for the purpose of examination, inspection, taking of samples and investigation of a retailer or distributor. If access is denied by the owner or person representing a retailer or distributor, the department may obtain a search warrant or an injunction from a court of competent jurisdiction.
- (3) Samples of not more than one (1) gallon per grade per inspection may be collected from any distributor or retail outlet without cost to the state. The department inspector shall present proper identification to the employee in charge prior to obtaining samples.
- (4) The department may issue a stop-sale order for any motor fuel not in compliance with provisions of this administrative regulation. The retailer shall be notified immediately of the stop-sale order. The order shall be in writing and contain an explanation of the violation. A stop-sale order shall be rescinded by the department upon resolution of the violation. The stop-sale order shall apply only to the location where sample analysis indicates an ASTM specification violation.

Section 8. Violation Process.

- (1) If the department determines a violation of KRS 363.900-908 has occurred, the offending party shall be immediately notified in writing of the violation. A notice of violation which contains a brief description of the specific violation shall be issued.
- (2) A stop-sale order may be included with the notice of violation.

(3) If a stop-sale order is issued, the product shall be removed from sale to the public until the product is brought into compliance with KRS 363.900-908.

(4) A certification that the product meets the requirements of KRS 363.900-908 shall be furnished to the department before sale shall be resumed. Additional samples of the product may be required.

(5) The retail facility, within ten (10) days of receipt of notice of violation, shall provide detailed documentation to the department describing the corrective action to bring the product into compliance with KRS 363.900-908.

(6) In issuing an order under KRS 363.900 to 363.908, the department shall use the "Motor Fuels Inspection and Testing Civil Penalty Guidelines of 1995" and may also 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 violator when determining the civil penalty to be assessed.

(7) For a first violation, the civil penalty shall not exceed \$1,000 nor be less than twenty-five (25) dollars. For a second or subsequent violations, the civil penalty shall not exceed \$5,000 nor be less than fifty (50) dollars.

(8) The civil penalty shall be due within thirty (30) days of receipt of the notice of violation unless a hearing is requested in accordance with subsection (10) of this section.

(9) Failure to pay a civil penalty within thirty (30) days after receipt of the violation may result in a stop-sale order being issued by the department.

(10) Upon receipt of notice of violation, an aggrieved party may, within ten (10) days, request in writing to the department, a hearing to contest the validity of the department's findings and order. The hearing shall be conducted in accordance with KRS Chapter 13B.

(11) Appeals may be taken from final orders within thirty (30) days to the Franklin Circuit Court.

Section 9. Incorporation by Reference.

(1) The following material is incorporated by reference:

(a) American Petroleum Institute color codes as specified and published in API Recommended Practice 1637, September 1995 edition; and

(b) "Motor Fuels Inspection and Testing Civil Penalty Guidelines", 1995.

(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 a.m. to 4:30 p.m.

(21 Ky.R. 1400; Am. 1734; 1883; eff. 1-25-95; 2163; 2669; eff. 4-12-95; 29 Ky.R. 532; 938; eff. 10-9-2002; 35 Ky.R. 1251; 1735; eff. 2-6-09; Crt eff. 2-18-2020.)