

OREGON DEPARTMENT OF AGRICULTURE  
Measurement Standards Division

Proposed Permanent Administrative Rule  
Implementing  
House Bill 3463 and House Bill 3497

**Biodiesel Blending Mandate  
And  
Premium Gasoline Ethanol Blending Exemption**

NOTE: Language *[bracketed in italics]* is to be removed and language that is in **bold** is to be added.

**603-027-0410 Definitions**

- (1) "Accredited Laboratory" means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor fuels using American Society for Testing and Materials (ASTM) International test procedures and specifications.
- (2) "Alcohol" means a volatile flammable liquid having the general formula  $C_nH_{(2n+1)}OH$  used or sold for the purpose of blending or mixing with gasoline for use in propelling motor vehicles, and commonly or commercially known or sold as an alcohol, and includes ethanol or methanol.
- (3) "ASTM" means ASTM International, the national voluntary consensus standards organization formed for the development of standards on characteristics and performance of materials, products, systems, and services; and the promotion of related knowledge. ASTM when used in these rules shall mean the *[2008]* **2009** Annual Book of ASTM Standards, Section 5, Volumes 05.01 through 05.05.
- (4) "Antiknock Index (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 antiknock index, including: Octane Rating, Posted Octane,  $(R + M) / 2$  Octane.
- (5) "Automotive Fuel Rating" means the automotive fuel rating determined under 16 CFR 306.5, required to be certified under 16 CFR 306.6 and 16 CFR 306.8, and required to be posted under 16 CFR 306.10. Under this Rule, sellers of liquid automotive fuels, including alternative fuels, must determine, certify, and post an appropriate automotive fuel rating. The automotive fuel rating for gasoline is the antiknock index (octane rating). The automotive fuel rating for alternative liquid fuels consists of the common name of the fuel along with a disclosure of the amount, expressed as a minimum percentage by volume, of the principal component of the fuel. For alternative liquid automotive fuels, a disclosure of other components, expressed as a minimum percentage by volume, may be included, if desired.

(6) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means a type of fuel suitable for use in spark-ignition automobile engines and also commonly used in marine and non-automotive applications.

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

(8) "Batch" and "Production Lot" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(9) "Bulk Facility" means a facility, including pipelines terminals, refinery terminals, rail and barge terminals and associated underground and above ground tanks connected or separate, from which motor vehicle fuels are withdrawn from bulk and delivered to retail, wholesale or nonretail facilities or into a cargo tank or barge used to transport those products.

(10) "Base Gasoline" means all components other than ethanol in a blend of gasoline and ethanol.

(11) "Biomass" means organic matter that is available on a renewable or recurring basis and that is derived from:

(a) Forest or rangeland woody debris from harvesting or thinning conducted to improve forest or rangeland ecological health and reduce uncharacteristic stand replacing wildfire risk;

(b) Wood material from hardwood timber described in ORS 321.267(3);

(c) Agricultural residues;

(d) Offal and tallow from animal rendering;

(e) Food wastes collected as provided under ORS Chapter 459 or 459A;

(f) Yard or wood debris collected as provided under ORS Chapter 459 or 459A;

(g) Wastewater solids; or

(h) Crops grown solely to be used for energy, and

(i) Biomass does not mean wood that has been treated with creosote, pentachlorophenol, inorganic arsenic, or other inorganic chemical compounds.

(12) "Biodiesel" means a motor vehicle fuel consisting of mono-alkyl esters of long chain fatty acids derived from vegetable oils, animal fats, or other nonpetroleum resources, not including palm oil, designated as B100 and complying with ASTM D6751. Biodiesel produced in or imported into Oregon for use as a blend stock shall comply with B100 biodiesel requirements including ASTM International D6751 and the Certificate of Analysis.

(13) "Biodiesel Blend" means a fuel comprised of a blend of biodiesel fuel with petroleum-based diesel fuel, designated BXX. In the abbreviation BXX, the XX represents the volume percentage of biodiesel fuel in the blend.

(14) "Certificate of analysis" means:

(a) A document verifying that B100 biodiesel has been analyzed and complies with, at a minimum, the following ASTM D 6751 biodiesel fuel test methods and specifications:

(A) Flash point (ASTM D 93);

(B) Acid number (ASTM D 664);

(C) Cloud point (ASTM D 2500);

(D) Water and sediment (ASTM D 2709);

- (E) Visual appearance (ASTM D 4176);
- (F) Free glycerin (ASTM D 6584);
- (G) Total glycerin (ASTM D 6584);
- (H) Oxidation stability (EN 14112 as per ASTM D 6751); **and**
- (I) Sulfur (ASTM D 5453 or ASTM D 7039). [*; and*]
- (b) [*Certification of feedstock origination describing the percent of the feedstock grown or produced in the states of Oregon, Washington, Idaho, and Montana and from outside of the states of Oregon, Washington, Idaho, and Montana.*] The ASTM International standards referenced in [*House Bill (HB) 2210*] **ORS 646.905(3)** for free and total glycerin are incorrect. The correct ASTM International standards reference for free and total glycerin is ASTM D 6584.
- (15) "Cetane Index" means an approximation of the cetane number of distillate fuel, which does not take into account the effect of a cetane improver additive, calculated from the density and distillation measurements. (Ref. ASTM D 976.)
- (16) "Cetane Number" means a numerical measure of the ignition performance of a diesel fuel obtained by comparing it to reference fuels in a standardized engine test. (Ref. ASTM D 613.)
- (17) "Coordinating Research Council (CRC) Rating" means a standardized format for rating injector and engine deposits as developed by the CRC.
- (18) "Co-solvent" means an alcohol other than methanol which is blended with either methanol or ethanol or both to minimize phase separation in gasoline.
- (19) "Dealer" means any motor vehicle fuel retailer dealer, nonretail dealer or wholesale dealer.
- (20) "Director" means the Director of Agriculture.
- (21) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.
- (22) "Distillate." means any product obtained by condensing the vapors given off by boiling petroleum or its products.
- (23) "EPA" means the United States Environmental Protection Agency.
- (24) "E85 Fuel Ethanol" means a blend of ethanol and hydrocarbons of which the ethanol portion is nominally 75 to 85 volume percent denatured fuel ethanol (Ref. ASTM D 5798).
- (25) "Ethanol" also known as "Denatured Fuel Ethanol", means nominally anhydrous ethyl alcohol meeting ASTM D 4806 standards. It is intended to be blended with gasoline for use as a fuel in a spark-ignition internal combustion engine. The denatured fuel ethanol is first made unfit for drinking by the addition of Alcohol and Tobacco Tax and Trade Bureau (TTB) approved substances before blending with gasoline.
- (26) "Ethanol facilities production capacity" means the designed and "as-constructed" rated capacity as verified by the Oregon Department of Agriculture, or the ethanol facilities production capacity as determined by an independent Professional Engineer registered in the State of Oregon that is not the design consultant and as verified by the Oregon Department of Agriculture.
- (27) "Feedstock" means the original biomass used in biofuel production.
- (28) "Gasoline" means any fuel sold for use in spark ignition engines whether leaded or unleaded.

- (29) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline along with a substantial amount (more than 0.35 mass percent oxygen, or more than 0.15 mass oxygen if methanol is the only oxygenate) of one or more oxygenates.
- (30) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to fuel, to reduce or prevent exhaust valve recession (or seat wear) in automotive spark-ignition internal combustion engines designed to operate on leaded fuel.
- (31) "Lead Substitute Engine Fuel" means a gasoline or gasoline-oxygenate blend that contains a "lead substitute."
- (32) Low Temperature Operability" means a condition which allows the uninterrupted operation of a diesel engine through the continuous flow of fuel throughout its fuel delivery system at low temperatures.
- (33) "Lubricity" means a qualitative term describing the ability of a fluid to affect friction between, and wear to, surfaces in relative motion under load.
- (34) "Methanol" means methyl alcohol, a flammable liquid having the formula CH<sub>3</sub>OH used or sold for the purpose of blending or mixing with gasoline for use in motor vehicles.
- (35) "M100 Fuel Methanol" means nominally anhydrous methyl alcohol, generally containing small amounts of additives, suitable for use as a fuel in a compression-ignition combustion engine.
- (36) "M85 Fuel Methanol" means a blend of methanol and hydrocarbons of which the methanol portion is nominally 70 to 85 volume percent and which meets the requirements of ASTM D 5797.
- (37) "Motor Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2700 Motor Method engine test.
- (38) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.
- (39) "Motor Vehicle Fuel" means gasoline, gasoline-ethanol blends, diesel, other renewable diesel, diesel-other renewable diesel blends, B100 Biodiesel, Biodiesel Blends, E85 Fuel Ethanol, M85 Fuel Methanol, or any other liquid product used for the generation of power in an internal combustion engine, except aviation jet fuels, liquefied petroleum gases or natural gases.
- (40) "Nonretail dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is dispensed through a card or key-activated fuel dispensing device to nonretail customers.
- (41) "Octane Rating" means the rating of the anti-knock characteristics of a grade or type of gasoline determined by dividing by two the sum of the research octane number and the motor octane number.
- (42) "Octane Rating Certification Documentation" means an invoice, bill of lading, delivery ticket, letter or other documentation that specifies the actual octane rating or a rounded rating that is the largest whole number or half of a number that is less than or equal to the number determined by or certified to the person transferring the gasoline.
- (43) "Official Sample" means a motor fuel sample delivered via nozzle directly through a fuel pump, dispenser, or metering device from either a fuel delivery truck, tank wagon, above ground or below ground fuel storage tank into a suitable sealable, one litre or

larger pressure-tight metal or glass container in the presence of, or drawn by, a department representative in the manner prescribed by department procedures. An official sample shall be appropriately sealed and labeled as to its identity, type, brand, grade, posted automotive fuel rating and the location, source, date, and name of official taking it at the time it is withdrawn from storage. A custody transfer receipt or record will be completed whenever an official sample changes hands enroute to a qualified motor fuel standards laboratory.

(44) "Other renewable diesel" means a diesel fuel substitute, produced from nonfossil renewable resources, that has an established ASTM International standard, is approved by the United States Environmental Protection Agency, and meets specifications of the National Conference on Weights and Measures, designated "100% Biomass-Based Diesel".

(45) "Other renewable diesel blend" means a fuel comprised of a blend of other renewable diesel fuel with petroleum-based diesel fuel, designated "XX% Biomass-Based Diesel Blend". In the abbreviation, "XX%", the XX represents the volume percentage of other renewable diesel in the blend.

(46) "Oxygen Content of Gasoline" means the percentage of oxygen by mass contained in a gasoline.

(47) "Oxygenate" means an oxygen-containing, ashless, organic compound, such as an alcohol or ether, which can be used as a fuel or fuel supplement.

(48) "Premium Diesel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine and shall meet Standard Fuel Specifications OAR 603-027-0420.

(49) "Production" means the ability of a biofuel production facility to produce biofuel that is in compliance with applicable ASTM International specifications.

(50) "Production Lot" and "Batch" means a homogenous production volume of finished biodiesel from one or more sources that is held in a single container where representative samples are taken and analyzed to provide an authentic certificate of analysis (COA) for the specific volume.

(51) "Research Octane Number" means a numerical indication of a spark-ignition engine fuel's resistance to knock obtained by comparison with reference fuels in a standardized ASTM D 2699 Research Method engine test.

(52) "Retail Dealer" means any person who owns, operates, controls or supervises an establishment at which motor vehicle fuel is or offered for sale to the public.

(53) "SAE" means the SAE International, a technical organization for engineers, scientists, technicians, and others in positions that cooperate closely in the engineering, design, manufacture, use, and maintainability of self-propelled vehicles.

(54) "Sales" means volumes of biofuels measured in gallons per year, relevant consumer usage, demand, pricing, and other factors affecting sales.

(55) "Thermal Stability" means the ability of a fuel to resist the thermal stress which is experienced by the fuel when exposed to high temperatures in a fuel delivery system.

(56) "Unleaded" in conjunction with "engine fuel" or "gasoline" means any gasoline or gasoline-oxygenate blend to which no lead or phosphorus compounds have been intentionally added and which contains not more than 0.013 gram lead per liter (0.05 g lead per U.S. gal) and not more than 0.0013 gram phosphorus per liter (0.005 g phosphorus per U.S. gal).

(57) "Use" means the historic blending of biofuel in Oregon in areas using biofuel to meet Oregon's Renewable Fuel Standard (RFS) and other information relevant to industry blending of biofuel including the infrastructure capacity to blend and distribute biofuel.

(58) "Wholesale Dealer" means any person who sells motor vehicle fuel if the seller knows or has reasonable cause to believe that the buyer intends to resell the motor vehicle fuel in the same or an altered form to a retail dealer, a nonretail dealer, or another wholesale dealer.

(59) "Winter" or "Winterized" Diesel means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine which has been blended for low temperature operability and shall meet Standard Fuel Specifications OAR 603-027-0420.

(60) "Withdrawn From Bulk" means removed from a bulk facility for delivery directly into a cargo tank or a barge to be transported to a location other than another bulk facility for use or sale in this state.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & ORS 646.905 - 646.990\_Stats.  
Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183\_Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 20-2004, f. & cert. ef. 6-28-04; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08

### **603-027-0420 Standard Fuel Specifications**

(1) Gasoline and Gasoline-Oxygenate Blends, as defined in this regulation, shall meet the following requirements:

(a) The ASTM D 4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel," except that volatility standards for unleaded gasoline blended with ethanol shall not be more restrictive than those adopted under the rules, regulations, and Clean Air Act waivers of the U.S. Environmental Protection Agency (which includes those promulgated by Oregon and Federally approved State Implementation Plans (SIP's)). Gasoline blended with ethanol shall be blended under any of the following three options:

(A) The base gasoline used in such blends shall meet the requirements of ASTM D 4814; or

(B) The blend shall meet the requirements of ASTM D 4814; or

(C) The base gasoline used in such blends shall meet all the requirements of ASTM D 4814 except distillation, and the blend shall meet the distillation requirements of the ASTM D 4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the ASTM D 4814 vapor pressure standard by more than 1.0 psi.

(c) Minimum Antiknock Index (AKI). The AKI shall not be less than the AKI posted on the product dispenser or as certified on the invoice, bill of lading, shipping paper, or other documentation.

(d) Lead Substitute Gasoline. Gasoline and gasoline-oxygenate blends sold as "lead substitute" gasoline shall contain a lead substitute additive which provides a level of protection against exhaust valve seat recession which is equivalent to the level of protection provided by a gasoline containing at least 0.026 gram of lead per liter (0.10 g per U.S. gal).

(2) Ethanol intended for blending with gasoline shall meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel."

(3) Gasoline-Ethanol Blends Required

(a) Consistent with *[House Bill 2210 Section 17(1)]* **ORS 646.912**, the Oregon Department of Agriculture shall study and monitor ethanol fuel production, use, and sales in Oregon.

**(b) Except as provided in OAR 603-027-0420(3)(c), all retail dealers, nonretail dealers, or wholesale dealers may only sell or offer for sale gasoline that contains ten percent ethanol by volume.**

*[(b) Based upon the Department of Agriculture's study of ethanol production, use, and sales in the State of Oregon, the mandatory use of ethanol as provided in HB 2210 Section 18(1) shall be phased in through three Oregon regions. These regions are defined by counties as follows:]*

*[(A) Region 1; Clackamas, Clatsop, Columbia, Marion, Multnomah, Polk, Tillamook, Washington, and Yamhill Counties;]*

*[(B) Region 2; Benton, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, and Linn Counties; and]*

*[(C) Region 3; Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Wheeler Counties.]*

*[(c) The ethanol facilities production capacity in Oregon has reached a level of at least 40 million gallons per year.]*

*[(A) As of January 15, 2008, except as provided in subparagraph (d) of this section, all retail dealers, nonretail dealers, or wholesale dealers within Region 1 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.]*

*[(B) As of April 15, 2008, except as provided in subparagraph (d) of this section, all retail dealers, nonretail dealers, or wholesale dealers within Region 2 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.]*

*[(C) As of September 16, 2008, except as provided in subparagraph (d) of this section, all retail dealers, nonretail dealers, or wholesale dealers within Region 3 may only sell or offer for sale gasoline that contains ten percent ethanol by volume.]*

*[(d)]* **(c) A retail dealer, nonretail dealer, or wholesale dealer may sell or offer for sale gasoline that is not blended with ethanol if the gasoline has an octane rating, as defined in ORS 646.945, of 91 or above or if the gasoline is for use in:**

(A) An aircraft;

(i) With a supplemental type certificate approved by the Federal Aviation Administration that allows the aircraft to use gasoline that is intended for use in motor vehicles, or

(ii) Issued a type certificate by an aircraft engine manufacturer that allows the aircraft to use gasoline that is intended for use in motor vehicles;

- (B) An aircraft that has been issued an experimental certificate, described in 14 C.F.R. 21.191, by the Federal Aviation Administration and that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;
- (C) A light-sport aircraft, as defined in 14 C.F.R. 1.1, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;
- (D) A vintage aircraft, as defined by the Oregon Department of Aviation by rule, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles;
- (E) An antique vehicle, as defined in ORS 801.125;
- (F) A Class I all-terrain vehicle, as defined in ORS 801.190;
- (G) A Class III all-terrain vehicle, as defined in ORS 801.194;
- (H) A racing activity vehicle, as defined in ORS 801.404;
- (I) A snowmobile, as defined in ORS 801.490;
- (J) Tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or
- (K) A watercraft.

[(e)] (d) Gasoline-ethanol blends shall contain not less than 9.2 percent by volume of agriculturally derived ethanol, exclusive of denaturants and permitted contaminants, that complies with

- (A) OAR 603-027-0420(2) Ethanol ASTM D 4806 standards,
- (B) Denatured as specified in 27 C.F.R parts 20 and 21, and
- (C) Complies with the volatility requirements specified in 40 C.F.R. part 80.

[(f)] (e) The ethanol shall be derived from agricultural product, woody waste or residue.

[(g)] (f) The gasoline and gasoline-ethanol blends shall comply with OAR 603-027-0420(1).

[(h)] (g) It is prohibited to blend with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after [it] **the gasoline** has been sold, transferred, or otherwise removed from a refinery or terminal.

#### (4) Gasoline Additive Restrictions.

(a) Effective November 1, 2009, a wholesale dealer, retail dealer, or nonretail dealer may not sell or offer to sell any gasoline blended or mixed with:

- (A) Ethanol unless the blend or mixture meets the specifications or registration requirements established by the United States Environmental Protection Agency pursuant to section 211 of the Clean Air Act, 42 U.S.C. section 7545 and 40 C.F.R. Part 79, and the ethanol complies with ASTM International specification ASTM D 4806;
- (B) [Methyl] **Methyl** tertiary butyl ether in concentrations that exceed 0.15 percent by volume; or
- (C) A total of all of the following oxygenates that exceeds one-tenth of one percent, by weight, of;

- (i) [Diisopropylether] **Diisopropyl ether**,
- (ii) Ethyl [tert-butylether] **tert-butyl ether**,
- (iii) Iso-butanol,
- (iv) Iso-propanol,
- (v) N-butanol,
- (vi) N-propanol,
- (vii) Sec-butanol,
- (viii) Tert-amyl methyl ether,

- (ix) Tert-butanol,
- (x) Tert-pentanol or tert-amyl [*alcohol*] **alcohol**, and
- (xi) Any other additive that has not been approved by the California Air Resources Board or the United States Environmental Protection Agency.

**(b) Nothing in this section shall prohibit transshipment through this state, or storage incident to the transshipment, of gasoline that contains methyl tertiary butyl ether in concentrations that exceed 0.15 percent by volume or any of the oxygenates listed in OAR 603-027-0420(4)(a)(C), provided,**

**(i) The gasoline is used or disposed of outside of this state; and**

**(ii) The gasoline is segregated from gasoline intended for use within this state.**

**(c) Notwithstanding the additives in OAR 603-027-0420(4)(a), a person may sell, supply, or offer to sell or supply gasoline in this state that contains any oxygenate other than ethanol, if the California Air Resources Board (CARB), California Environmental Policy Council (CEPC), or the United States Protection Agency (U.S. EPA) allow use of the oxygenate.**

(5) Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils."

(6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and have a cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Winter or winterized diesel (low temperature operability) is only applicable October 1 - March 31 of each year.

(7) Premium Diesel Fuel -- All diesel fuels identified on retail and nonretail dispensers, bills of lading, invoices, shipping papers, or other documentation with terms such as premium, super, supreme, plus, or premier shall meet the requirements of ASTM D 975, "Standard Specification for Diesel Fuel Oils" and must conform to the following requirements:

(a) Cetane Number -- A minimum cetane number of 47.0 as determined by ASTM Standard Test Method D 613;

(b) Low Temperature Operability -- A cold flow performance measurement which meets the ASTM D 975 tenth percentile minimum ambient air temperature charts and maps by either ASTM Standard Test Method D 2500 (Cloud Point) or ASTM Standard Test Method D 4539 (Low Temperature Flow Test, LTFT). Low temperature operability is only applicable October 1 - March 31 of each year;

(c) Thermal Stability -- A minimum reflectance measurement of 80 percent as determined by ASTM Standard Test Method D 6468 (180 minutes, 150 0C);

(d) Lubricity -- A maximum wear scar diameter of 520 microns as determined by ASTM D 6079. If a single test of more than 560 microns is determined, a second test shall be conducted. If the average of the two tests is more than 560 microns, the sample does not conform to the requirements of this part.

(8) Biodiesel; B100 Biodiesel and Biodiesel intended for blending with diesel fuel shall,  
(a) Meet the requirements of ASTM D 6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels";

- (b) Have a Certificate of Analysis for each batch or production lot produced in Oregon prior to blending with any diesel fuel sold or offered for sale in Oregon. Imported biodiesel shall have a Certificate of Analysis after entry into Oregon prior to blending, sale, or offer for sale in Oregon;
- (c) If biodiesel with a Certificate of Analysis does not comply with the specifications of ASTM International D 6751 when tested by the Department of Agriculture, then until the producer's Certificate of Analysis is verified and acceptable to the Department, the Department may require the producer of the biodiesel to test future productions by one of the following:
- (A) An accredited motor fuel laboratory, or
  - (B) A non-accredited motor fuel laboratory that meets all of the following requirements;
    - (i) The laboratory facilities must house and allow proper operation of all required equipment in accordance with the applicable test procedures,
    - (ii) The laboratory must use personnel trained to perform and analyze ASTM International D 6751 biodiesel fuel tests and other required tests,
    - (iii) The laboratory must use testing equipment that has been calibrated or verified to meet the requirements of each ASTM International test procedure used,
    - (iv) The laboratory must participate in an ASTM International proficiency program or similar national proficiency program for at least three times per year with appropriate results, and
    - (v) The laboratory must maintain current documentation of personnel qualifications, equipment verification, and proficiency results for at least one year. These records shall be available for inspection and reproduction upon request by the Director.
- (9) Biodiesel Blends;**
- (a) Biodiesel blends through B5 must meet the requirements of ASTM D 975 Standard Specification for Diesel Fuel Oils.**
- (b) Biodiesel blends of B6 through B20 must meet the requirements of ASTM D 7467, Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6-B20).**
- [(9) Biodiesel Blends;]* **(c) Blends of biodiesel and diesel fuels greater than B20 [shall] must meet the following requirements:**
- [(a)]* **(A)** The base diesel fuel *[shall]* **must** meet the requirements of ASTM D 975, Standard Specification for Diesel Fuel Oils; and
  - [(b)]* **(B)** The biodiesel blend stock *[shall]* **must** meet:
    - [(A)]* **(i)** The requirements of ASTM D 6751, Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels, and
    - [(B)]* **(ii)** The requirements in OAR 603-027-0420(8).
  - [(c)]* **(d)** Exception; Biodiesel may be blended with diesel fuel whose sulfur, lubricity, or aromatic levels are outside specification ASTM D 975, Standard Specification for Diesel Fuel Oils, grades 1-D S15, 1-D S500, 2-D S15, or 2-D S500 provided the finished mixture meets pertinent national and local specifications and requirements for these properties.
- (10) Other Renewable Diesel *[shall]* **must** meet its established ASTM International standard, be approved by the United States Environmental Protection Agency, and comply with specifications of the National Conference on Weights and Measures.
- (11) Biodiesel Blends Required.

(a) *[When the production of biodiesel in Oregon from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana reaches a level of at least 5 million gallons on an annualized basis for at least three months, the Department shall notify all retailers, nonretail dealers, and wholesale dealers in Oregon, in a notice that communicates,]*

**Except as provided in subsection (e) of this section, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least two percent by volume biodiesel.**

*[(A) The biodiesel production in Oregon from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana has reached a level of at least 5 million gallons on an annualized basis for at least three months, and]*

*[(B) Three months after the date of the notice, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least two percent biodiesel by volume or other renewable diesel with at least two percent renewable component by volume].*

(b) When the *[production of biodiesel in Oregon from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana]* **capacity of biodiesel production facilities in Oregon** reaches a level of at least 15 million gallons on an annualized basis *[for at least three months, the];*

**(A) The Department shall notify all retailers, nonretail dealers, and wholesale dealers in Oregon [ , in a notice that communicates,] that the capacity of biodiesel production facilities in Oregon has reached a level of at least 15 million gallons on an annualized basis and that a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least five percent by volume biodiesel within two months of the date on the notification under this subsection, and**

*[(A) The biodiesel produced in Oregon from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana has reached a level of at least 15 million gallons on an annualized basis for at least three months, and]*

*(B) [Three] **Two** months after the date of the notice, a retail dealer, nonretail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing at least five percent biodiesel by volume [or other renewable diesel with at least five percent renewable component by volume].*

(c) Biodiesel blends and other renewable diesel blends shall contain the volume percent stated to the nearest;

(A) *[1.0]* **1** volume percent for blends through *[5.0]* **5** volume percent, and

(B) *[2.0]* **2** volume percent for blends greater than 5 volume percent through 20 volume percent.

(d) Diesel fuel containing more than five percent biodiesel by volume or other renewable diesel with more than five percent renewable component by volume must be labeled as required in OAR 603-027-0430.

(e) Exemption. The minimum biodiesel fuel content *[or renewable component in other renewable diesel]* requirements in OAR 603-027-0420 do not apply to diesel fuel sold or offered for sale for use by railroad locomotives, marine engines, or home heating.

(12) Aviation Gasoline shall meet the requirements of ASTM D 910, "Standard Specification for Aviation Gasoline."

(13) E85 Fuel Ethanol shall meet the requirements of ASTM D 5798, "Standard Specification for Fuel Ethanol (Ed75-Ed85) for Automotive Spark-Ignition Engines."  
(14) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."  
[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 561.190, 646.905 - 646.990, OL 1997, Ch. 310 (SB 414)\_Stats.  
Implemented: ORS 646.905 - 646.990 & 183, OL 1997, Ch. 310 (SB 414)\_Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08

### **603-027-0430**

#### **Classification and Method of Sale of Petroleum Products**

(1) General Considerations:

(a) Documentation.

(A) When gasoline; gasoline-oxygenate blends; reformulated gasoline; M85 and M100 fuel methanol; E85 and E100 fuel ethanol; B100 biodiesel and biodiesel blends; renewable diesel and diesel-renewable diesel blends; diesel fuel; winter or winterized diesel fuel; premium diesel fuel; or aviation gasoline are sold, an invoice, bill of lading, shipping paper or other documentation, must accompany each delivery other than a sale by a retail or nonretail dealer. This document must identify the:

(i) Quantity,

(ii) The name of the product,

(iii) The particular grade of the product,

(iv) The word "Winter" or "Winterized" diesel if applicable,

(v) The word "Premium" diesel if applicable,

(vi) The volume percent biodiesel and other renewable diesel, if a biodiesel, biodiesel blend, other renewable diesel, or diesel-other renewable diesel blend through 5 volume percent to the nearest [1.0] 1 volume percent and for greater than 5 volume percent through 20 volume percent blends to the nearest [2.0] 2 volume percent,

(vii) The applicable automotive fuel rating,

(viii) The name and address of the seller and buyer,

(ix) The date and time of the sale,

(x) For gasoline-oxygenate and gasoline-alcohol blends which contain more than 1.5 mass percent oxygen, the documentation shall state the oxygenate type and oxygenate content, in volume percent, to the nearest 0.5 volume percent, and

(xi) For non-ethanol blended gasoline the documentation shall state that the gasoline is non-ethanol blended.

(B) Each operator of a bulk facility and each person who imports motor vehicle fuels into this state for sale in this state shall keep, for at least one year, at the person's registered place of business complete and accurate records of any motor vehicle fuels sold if sold or delivered in this state.

(C) Each biodiesel [*or other renewable diesel*] producer, each operator of a biodiesel bulk facility and each person who imports biodiesel [*or other renewable diesel*] into Oregon for sale in this state shall keep, on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel [*or other renewable diesel*] sold or delivered in Oregon.

(D) Each biodiesel producer in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the producer's name, location address, date, and quantity of biodiesel production and sales [*from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana*]. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(E) All retail dealers, nonretail dealers, and wholesale dealers in Oregon are required to provide, upon request of the Department, evidence of a certificate of analysis for the biodiesel received.

(F) Each ethanol production facility in Oregon shall keep, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity was attained, quantity of ethanol produced, and sales in Oregon. This documentation shall be completed on a form provided by the Department of Agriculture and mailed on a quarterly basis to the Department in Salem, Oregon.

(G) Retail dealers and nonretail dealers shall maintain at their facilities the octane rating certification or motor vehicle fuel delivery documentation for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, other renewable diesel fuel, and diesel-other renewable diesel fuel blends sold or offered for sale.

(b) Retail and Nonretail Gasoline Dispenser Labeling. All retail and nonretail gasoline dispensing devices must identify conspicuously on each face of the dispenser(s),

(A) The type of product,

(B) The particular grade of the product,

(C) Type of oxygenate contained if applicable,

(i) Including the specific volume percent of ethanol in gasoline-ethanol blends stating, for example,

“THIS PRODUCT CONTAINS 10% ETHANOL” or other similar language in type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position,

(ii) Prohibited terms and phrases include but are not limited to, “Contains Up To 10% Ethanol”, “May Contain Ethanol”, or any other similar language,

(D) The applicable automotive fuel rating, and

(E) If non-ethanol blended gasoline, **other than 91 octane or above**, in compliance with OAR 603-027-0420, the dispensers shall be labeled,

“NON-ETHANOL BLENDED GASOLINE FOR EXEMPTED USE ONLY (ORS 646.913)” in [*capitol*] **capital** letters and type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type) located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous to the consumer.

(c) Posting of Exceptions for Non-Ethanol Blended Gasoline. The exceptions for non-ethanol blended gasoline, **other than 91 octane or above**, shall be posted at a business that sells or offers for sale non-ethanol blended gasoline in a position that is clear and conspicuous to the consumer. The exceptions shall be posted; “NON-ETHANOL BLENDED GASOLINE FOR USE IN THE FOLLOWING APPLICATIONS ONLY;” in [*capitol*] **capital** letters and type at least 6.4 millimeters (1/4 inch) in height, 1 millimeter (1/32 inch) stroke (width of type), followed by, “AIRCRAFT WITH A SUPPLEMENTAL TYPE CERTIFICATE APPROVED BY THE FEDERAL AVIATION ADMINISTRATION THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES; AIRCRAFT ISSUED A TYPE CERTIFICATE BY AN AIRCRAFT ENGINE MANUFACTURER THAT ALLOWS THE AIRCRAFT TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES; AN AIRCRAFT THAT HAS BEEN ISSUED AN EXPERIMENTAL CERTIFICATE, DESCRIBED IN 14 C.F.R. 21.191, BY THE FEDERAL AVIATION ADMINISTRATION AND THAT IS REQUIRED BY THE MANUFACTURER’S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES; A LIGHT-SPORT AIRCRAFT, AS DEFINED IN 14 C.F.R. 1.1, THAT IS REQUIRED BY THE MANUFACTURER’S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES; A VINTAGE AIRCRAFT, AS DEFINED BY THE OREGON DEPARTMENT OF AVIATION BY RULE, THAT IS REQUIRED BY THE MANUFACTURER’S SPECIFICATIONS TO USE GASOLINE THAT IS INTENDED FOR USE IN MOTOR VEHICLES; AN ANTIQUE VEHICLE, AS DEFINED IN ORS 801.125; A CLASS I ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.190; A CLASS III ALL-TERRAIN VEHICLE, AS DEFINED IN ORS 801.194; A RACING ACTIVITY VEHICLE, AS DEFINED IN ORS 801.404; A SNOWMOBILE, AS DEFINED IN ORS 801.490; TOOLS, INCLUDING BUT NOT LIMITED TO LAWN MOWERS, LEAF BLOWERS, AND CHAIN SAWS; OR A WATERCRAFT (Reference ORS 646.913)” in [*capitol*] **capital** letters and type at least 3 millimeters (1/8 inch) in height, 0.4 millimeter (1/64 inch) stroke (width of type).

(d) Grade Name. The sale of any product under any posted grade name that indicates to the purchaser that it is of a certain automotive fuel rating or ASTM grade indicated in the posted grade name must be consistent with the applicable standard specified in OAR 603-027-0420 "Standard Fuel Specifications".

(2) Automotive Gasoline and Automotive Gasoline-Oxygenate Blends:

(a) Posting of Antiknock Index Required. All automotive gasoline and automotive gasoline-oxygenate blends shall post the antiknock index in accordance with 16 CFR Part 306.

(b) Use of Lead Substitute Must Be Disclosed. Each dispensing device from which gasoline or gasoline oxygenate blend containing a lead substitute is dispensed shall display the grade name followed by "With a Lead Substitute" (e.g. "Unleaded With a Lead Substitute"). The lettering of the lead substitute declaration shall not be less than

12.7 millimeters (1/2 in) in height and 1.5 centimeters (1/16 in) stroke (width of type). The color of the lettering shall be in definite contrast to the background color to which it is applied.

(c) Prohibition of Terms. It is prohibited to use specific terms to describe a grade of gasoline or gasoline-oxygenate blend unless it meets the minimum antiknock index requirement shown in Table 1. [Table not included. See ED. NOTE.]

(3) Diesel Fuel:

(a) Labeling of Product and Grade Required. Diesel fuel shall be identified by "Diesel" and grades "No. 1-D S15", "No. 1-D S500", "No. 1-D S5000", "No. 2-D S15", "No. 2-D S500", "No. 2-D S5000", or "No. 4-D". Each retail or nonretail dispenser of diesel fuel shall be labeled "Diesel" and the grade being dispensed.

(b) Location of Label. These labels shall be located on each face and on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type).

(4) Winter or Winterized Diesel Fuel:

(a) Labeling of Product and Grade Required. The dispensers of winterized diesel fuel must be labeled as required in OAR 603-027-0430(3)(a) and include the words "WINTERIZED DIESEL" or "WINTER DIESEL" (e.g. "WINTERIZED DIESEL No. 2-D S15").

(b) Location of Winterized Diesel Fuel Label. The location of the winterized diesel label shall be as required in OAR 603-027-0430(3)(b) or on a "pump topper" mounted on top of each winterized diesel dispenser with lettering as specified in OAR 603-027-0430(3)(b) and must be in a position that is clear and conspicuous from the driver's position.

(5) Premium Diesel Fuel :

(a) Labeling of Premium Diesel Required. In addition to labeling requirements specified in OAR 603-027-0430(3), all retail and nonretail dispensers of premium diesel shall be labeled "Premium Diesel" (e.g. "Premium Diesel No. 2-D S15").

(b) Location of Premium Diesel Fuel Label. The location of the premium diesel fuel label shall be located on the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the driver's position, in a type at least 12.7 millimeter (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type).

(6) Biodiesel and Other Renewable Diesel:

(a) Identification of Product.

(A) Biodiesel and biodiesel blends shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100)

(B) Other renewable diesel and other renewable diesel blends shall be identified by the numerical value representing the volume percentage of other renewable diesel immediately followed by the percentage symbol (%) and then the term "Biomass-Based Diesel" or "Biomass-Based Diesel Blend".

(Examples: "10% Biomass-Based Diesel Blend"; "20% Biomass-Based Diesel Blend"; "70% Biomass-Based Diesel Blend"; "100% Biomass-Based Diesel".)

(b) Labeling of Retail and Non-Retail Dispensers Containing Between 5% and Up To and Including 20% Biodiesel or Other Renewable Diesel.

- (A) If containing biodiesel, the dispenser(s) shall be labeled with either:
- (i) The capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with “Biodiesel Blend” (Examples: “B10 Biodiesel Blend”; “B20 Biodiesel Blend”); or
  - (ii) The phrase, “Biodiesel Blend Between 5% and 20%” or similar words[.]; or
  - (iii) The Federal Trade Commission (FTC) 16 CFR Part 306 approved label “Biodiesel Blend” that is appropriate for blends from 5% to 20% biodiesel, or “B20 Biodiesel Blend” that is appropriate for 20% biodiesel blends only.**
- (B) If containing other renewable diesel, the dispenser(s) shall be labeled with either:
- (i) “XX% Biomass-Based Diesel Blend” where the abbreviation “XX” represents the volume percentage of other renewable diesel in the blend; or
  - (ii) The phrase, “Biomass-Based Diesel Blend Between 5% and 20%” or similar words.
- (c) Labeling of Retail and Non-Retail Dispensers Containing More Than 20% Biodiesel or More Than 20% Other Renewable Diesel.
- (A) If containing more than 20% biodiesel, the dispenser(s) shall be labeled;
- (i) “Consult Vehicle Manufacturer Fuel Recommendations”, posted on the dispenser front panels in a position clear and conspicuous from the driver’s position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied; and in addition**
  - (ii) [with] Separately labeled with** the capital letter “B” followed by the numerical value representing the volume percentage of biodiesel fuel and ending with either “Biodiesel” or “Biodiesel Blend” (Examples: “B100 Biodiesel”; “B60 Biodiesel Blend”); or
  - (iii) The Federal Trade Commission (FTC) 16 CFR Part 306 approved label for biodiesel blends greater than 20% biodiesel.**
- (B) If containing more than 20% other renewable diesel, the dispenser(s) shall be labeled with the numerical value representing the volume percentage of other renewable diesel immediately followed by the percentage symbol (%) and then the term “Biomass-Based Diesel” or “Biomass-Based Diesel Blend” (Examples: “100% Biomass-Based Diesel”; “70% Biomass-Based Diesel Blend”).
- (d) Documentation for Biodiesel, Biodiesel Blends, Other Renewable Diesel, and Other Renewable Diesel Blends. The operator of retail and non-retail dispensers shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel, other renewable diesel, or any combination thereof on an invoice, bill of lading, shipping paper, or other document in compliance with OAR 603-027-0430(1)(a).
- (e) Exemption.
- (A) Biodiesel blends containing 5% or less biodiesel by volume or 5% or less other renewable diesel by volume are exempted from the dispenser labeling requirements in OAR 603-027-0430(6)[(b) and (c)] except,
- (B) If a dispenser is labeled with any reference to biodiesel or other renewable diesel and the fuel contains 5% or less biodiesel or 5% or less other renewable diesel, then it shall be labeled either:
- (i) “5% Or Less Biodiesel Blend”, or
  - (ii) “5% Or Less Biomass-Based Diesel Blend”.

(f) Size of Labeling Type. *[All]* **Except for the FTC 16 CFR Part 306 approved labels and the “Consult Vehicle Manufacturer Fuel Recommendations” labels as specified, all labeling required in OAR 603-027-0430(6)(b), (c), and (e)(B)],** shall be in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type)

(7) Aviation Gasoline: Labeling of Grade Required. Aviation gasoline and dispensers shall be identified by and labeled with Grade 80, Grade 100, or Grade 100LL.

(8) E85 Fuel Ethanol:

(a) How to Identify E85 Fuel Ethanol. Fuel ethanol shall be identified as E85. (Example: E85)

(b) Retail or Nonretail E85 Fuel Ethanol Dispenser Labeling. *[Each retail or nonretail dispenser of fuel ethanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter E followed by the numerical value volume percent denatured ethanol and ending with the word "ethanol." (Example: E85 Ethanol).]*

(A) Fuel ethanol dispensers shall be labeled with its automotive fuel rating in accordance with 16 Code of Federal Regulations Part 306.

(B) A label shall be posted which states, “For Use in Flexible Fuel Vehicles (FFV) Only”. This information shall be posted on the upper 50% of the dispenser front panels in a position clear and conspicuous from the driver’s position, in a type at least 12.7 mm (1/2 inch) in height, 1.5 mm (1/16 inch) stroke (width of type).

**(C) A label must be posted that states, “Consult Vehicle Manufacturer Fuel Recommendations”. This label must be posted on the dispenser front panels in a position clear and conspicuous from the driver’s position in block letter type at least 6 mm (1/4 inch) in height by 0.8 mm (1/32 inch) stroke (width of type) and the color must be in definite contrast to the background color to which it is applied.**

(9) Fuel Methanol:

(a) Identification of Fuel Methanol. Fuel methanol shall be identified by the capital letter M followed by the numerical value volume percentage of methanol. (Example: M85)

(b) Retail or Nonretail Dispenser Labeling. Each retail or nonretail dispenser of fuel methanol shall be labeled in type at least 12 mm (1/2 inch) in height and 1.5 mm (1/16 inch) stroke (width of type) with the capital letter M followed by the numerical value volume percent methanol and ending with the word "methanol". (Example: M85 Methanol).

(c) Additional Labeling Requirements. Fuel methanol shall be labeled with its automotive fuel rating in accordance with 16 CFR Part 306.

[ED. NOTE: Tables & Examples referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990\_Stats.

Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183\_Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 15-2007(Temp), f. & cert. ef. 10-15-07 thru 4-11-08; DOA. 20-2007(Temp) f. & cert. ef. 11-29-07 thru 4-11-08; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08

## **603-027-0440 Storage Tanks**

(1) Water in Motor Vehicle Fuel Storage:

(a) Water in Gasoline-Alcohol Blends, **Biodiesel, Biodiesel Blends**, E85 Fuel Ethanol, M85 Fuel Methanol, and Aviation Gas. No water or water-alcohol phase greater than six millimeters (1/4 in) as determined by an appropriate detection paste is allowed to accumulate in any tank utilized in the storage of gasoline-alcohol blend, biodiesel, biodiesel blends, E85 fuel ethanol, M85 fuel methanol, and aviation *[gasoline]* **fuel**.

(b) Water in Gasoline, Diesel, *[Biodiesel, Biodiesel Blends,]* Other Renewable Diesel, Other Renewable Diesel Blends, Gasoline-Ether, and Other Fuels. Water phase shall not exceed 25 mm (1 inch) in depth when measured with water indicating paste in any tank utilized in the storage of diesel, gasoline, gasoline-ether blends at retail or nonretail except as required in OAR 603-027-0440(1)(a).

(2) Product Storage Identification:

(a) Fill Connection Labeling.

(A) The fill connection for any motor vehicle fuel or aviation *[gasoline]* **fuel** storage tank from which the fuels are dispensed directly into motor vehicle or aircraft fuel tanks shall be permanently, plainly, and visibly marked as to the grade of product contained therein.

(B) In addition, storage tank fill connections of non-ethanol blended gasoline shall be permanently, plainly, and visibly marked that the product contained therein is non-ethanol blended gasoline.

(b) Declaration of Meaning of Color Code. When the fill connection device is marked by means of a color code, the color code key shall be conspicuously displayed at the place of business.

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990\_Stats.

Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183\_Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08

## **603-027-0490 Enforcement Proceedings; Civil Penalties**

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of these rules and/or 1997 Oregon Laws Chapter 310 is a separate and distinct act and in cases of continuing violations, each day's continuance is a separate and distinct violation, proceedings for a Stop Use, Hold and/or Removal Order, or for the assessment of civil penalties arising from the same conduct or failure to act may be consolidated into a single proceeding.

(2) The Director or the Director's designate shall prescribe a reasonable time for the elimination of the violation prior to imposing a civil penalty, except that if a party fails to abide by the terms of any Stop Use, Hold and/or Removal Order, the Director or the Director's designate may immediately impose a civil penalty in addition to any other remedies provided by law.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Civil penalties shall be due and payable when the person incurring the penalty receives a Civil Penalty Assessment Notice in writing from the Director or the Director's designate.

(5) A Civil Penalty Assessment Notice, Stop Use Order, Hold Order and/or Removal Order shall be in writing. In addition to the posting providing for by OAR 603-207-0470 for Stop Use, Hold and Removal Orders, these documents shall be served on the owner or operator of the facility by registered mail, certified mail, or in person. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved and;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties imposed, if any;

(d) A statement of the person's right to request a hearing if such request is made within ten days of mailing of the notice and an explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the person upon whom the Stop Use, Hold and/or Removal Order, and /or civil penalty is assessed makes a written request for a hearing within ten days from the date of the mailing of the notice.

(6) A civil penalty imposed under the applicable statutes or these regulations may be remitted or reduced at the Director's discretion upon such terms and conditions that are proper and consistent with public safety and welfare.

(7) Hearing Procedures: All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550, and the Attorney General's Uniform and Model Rules of Procedure (OAR chapter 137).

(8) Entry of Order and Appeal Rights: If a person notified of the Stop Use, Hold, and/or Removal Order and/or civil penalty fails to request a hearing as specified in OAR 603-027-0490(5)(e), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the Department as follows:

(a) The order shall be signed by the Director or the Director's designate;

(b) If the order is not appealed, or if it is appealed and the order is sustained on appeal, the order shall constitute a judgment and may be recorded with the county clerk in any county of this state. Any penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

(9) Penalty schedule: In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of Oregon Laws 1997, chapter 310 section (7) relating to Motor Fuel Standards Regulation. The amount of any civil penalty shall be determined using the following table and shall not exceed \$10,000. In establishing penalty assessments within the table (Table 2), the department will consider factors such as the type of violation, the cause(s) of the violation, the economic impact on fuel purchasers, prior history of violations, repetition of violations, and the degree of demonstrated cooperativeness of the fuel seller. [Table not included. See ED. NOTE.]

(10) The commission of each violation has been categorized as to its magnitude of violation as follows:

(a) Gravity 1 (Minor):

(A) Labeling of Dispenser(s) (Ref. OAR 603-027-0430):

(i) Gasoline dispenser(s) not labeled with the identity of the product dispensed;

- (ii) Gasoline dispenser(s) not labeled with the identity of the grade dispensed;
- (iii) Gasoline dispenser(s) not labeled with the identity of oxygenates;
- (iv) Gasoline-ethanol blend dispensers not labeled that the product contains 10% by volume ethanol in compliance with OAR 603-027-0430.
- (v) Gasoline dispenser(s) of non-ethanol blended gasoline, **other than 91 octane or above**, not labeled for exempted use only in compliance with OAR 603-027-0430.
- (vi) Exceptions for non-ethanol blended gasoline, **other than 91 octane or above**, not posted in compliance with OAR 603-027-0430.
- (vii) Use of Prohibited Terms. Prohibited terms used to describe the grade of gasoline or gasoline-oxygenate blends. (Ref. OAR 603-027-0430);
- (viii) Gasoline dispenser(s) not labeled with the Antiknock Index (AKI) number;
- (ix) Gasoline dispenser(s) for lead substitute motor vehicle fuels not properly identified;
- (x) Diesel dispenser not labeled with either the identity of the product and/or grade dispensed;
- (xi) Location of either the diesel product and/or grade label not on each face and on the upper 50 percent of the dispenser front panels;
- (xii) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;
- (xiii) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430;
- (xiv) Aviation gasoline dispenser(s) not labeled with the identity of the grade dispensed;
- (xv) Fuel ethanol dispenser(s) not labeled with the correct automotive fuel rating, *[the identity of the product dispensed, or use limited to flex fuel vehicles only]* **“For Use In Flexible Fuel Vehicles (FFV) Only”, or “Consult Vehicle Manufacturer Fuel Recommendations” in compliance with OAR 603-027-0430;**
- (xvi) Fuel methanol dispenser(s) not labeled with the correct automotive fuel rating and the identity of the product dispensed;
- (xvii) Biodiesel, biodiesel blend, other renewable diesel, or other renewable diesel blend fuel dispenser(s) not labeled in compliance with OAR 603-027-0430.
- (B) Storage Tank(s); Motor vehicle fuel storage tank(s);
  - (i) Not correctly identified as to the product contained;
  - (ii) Not correctly identified that the product contained therein is non-ethanol blended gasoline. (Ref. OAR 603-027-0440)
- (C) Documentation, Wholesale Dealer and Bulk Facility (Ref. OAR 603-027-0430):
  - (i) Incorrect, incomplete, or no documentation of motor vehicle fuels provided to the retail dealer or nonretail dealer at the time of motor vehicle fuel delivery;
  - (ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business.
- (D) Certificate of Analysis Documentation, Biodiesel *[or Other Renewable Diesel]* Producer, Operator of a Biodiesel Bulk Facility, and each Person Who Imports Biodiesel *[or Other Renewable Diesel]* not keeping on a monthly basis for at least one year, at the person's registered place of business the certificate of analysis for each batch or production lot of biodiesel *[or other renewable diesel]* sold or delivered in Oregon (Ref. OAR 603-027-0430);
- (E) Documentation, Biodiesel Production Facility not keeping, on a monthly basis for at least one year, at the person's registered place of business, documentation declaring the

producer's name, location address, date and quantity of biodiesel production and sales *[from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana]* (Ref. OAR 603-027-0430);

(F) Documentation not delivered on a quarterly basis to the Oregon Department of Agriculture declaring the biodiesel producer's name, location address, date and quantity of biodiesel production and sales *[from base feedstock grown or produced in Oregon, Washington, Idaho, and Montana]* in compliance with OAR 603-027-0430;

(G) Documentation, Retail Dealer, Nonretail Dealer, and Wholesale Dealer not providing, upon request of the Department, evidence of a certificate of analysis for the biodiesel received (Ref. OAR 603-027-0430);

(H) Documentation, Ethanol Production Facility not keeping, on an annual basis by month, at the person's registered place of business, documentation declaring the production facility's name, location address, net ethanol production capacity, the date that the net ethanol capacity attained, quantity of ethanol produced, and sales in Oregon.

(I) Documentation declaring the ethanol facility's name, location address, net ethanol production, date, quantity of ethanol produced, and sales in Oregon not delivered to the Oregon Department of Agriculture on a quarterly basis in compliance with OAR 603-027-0430;

(J) Documentation, Retail Dealer and Nonretail Dealer (Ref. OAR 603-027-0430); Octane rating certification or motor vehicle fuel delivery documentation not maintained at their facilities for the three most recent deliveries to the facility for each grade of gasoline, fuel ethanol, fuel methanol, biodiesel, biodiesel blends, diesel fuel, other renewable diesel fuel, and other renewable diesel fuel blends sold or offered for sale.

(b) Gravity 2 (Moderate):

(A) Storage Tank(s);

(i) Water phase in motor vehicle fuel storage tank(s) for gasoline-alcohol blends, B100 Biodiesel, Biodiesel Blends, E85 fuel ethanol, M85 fuel methanol, and aviation *[gasoline]* **fuel** exceed allowable limits (Ref. OAR 603-027-0440);

(ii) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, other renewable diesel, other renewable diesel blends, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440).

(c) GRAVITY 3 (Major):

(A) Automotive fuel rating of the gasoline does not meet the minimum antiknock index (AKI) posted on the dispenser or certified on the invoice, bill of lading, shipping paper, or other documentation. (Ref. OAR 603-027-0420 and 603-027-0430);

(B) Gasoline does not meet ASTM standards (Ref. OAR 603-207-0420);

(C) Gasoline offered for sale with a lead substitute that does not meet requirements for a lead substitute gasoline. (Ref. OAR 603-027-0420);

(D) Ethanol intended for blending with gasoline does not meet the requirements of ASTM D 4806, "Standard Specification for Denatured Fuel Ethanol for Blending with gasolines for Use as Automotive Spark-Ignition Engine Fuel". (Ref. OAR 603-027-0420);

(E) Gasoline sold or offered for sale does not meet gasoline-ethanol blend requirements (Ref OAR 603-027-0420);

- (F) Gasoline Additive Restrictions: A wholesale dealer, retail dealer, or nonretail dealer selling or offering for sale gasoline blended or mixed with prohibited additives. (Ref. OAR 603-027-0420);
- (G) Diesel fuel offered for sale does not meet ASTM standards (Ref. OAR 603-027-0420);
- (H) Winter or Winterized diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);
- (I) Premium diesel fuel offered for sale does not meet Standard Fuel Specifications (Ref. OAR 603-027-0420);
- (J) Biodiesel intended for blending with diesel fuel does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);
- (K) Biodiesel blend offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);
- (L) Certificate of analysis not provided for each batch or production lot of biodiesel produced in Oregon or imported into Oregon prior to blending with any diesel fuel sold or offered for sale in Oregon. (Ref. OAR 603-027-0420);
- (M) Other renewable diesel sold or offered for sale does not meet fuel specifications (Ref. OAR 603-027-0420);
- (N) Diesel fuel sold or offered for sale does not meet diesel-biodiesel [*or diesel-other renewable diesel*] blend requirements. (Ref. OAR 603-027-0420);
- (O) Biodiesel, biodiesel blends, other renewable diesel, other renewable diesel blends, or any combination thereof **content** not to nearest [*1.0*] **1** volume percent for blends through 5 percent by volume or not to nearest [*2.0*] **2** volume percent for blends greater than 5 percent by volume through 20 percent by volume (Ref. OAR 603-027-0420);
- (P) Aviation gasoline does not meet the requirements of ASTM D 910, “Standard Specification for Aviation Gasolines”. (Ref. OAR 603-027-0420);
- (Q) E85 Fuel Ethanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420);
- (R) M85 Fuel Methanol offered for sale does not meet ASTM Standard Fuel Specifications (Ref. OAR 603-027-0420).

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 561.190, OL 1997, Ch. 310 (SB 414) & 646.905 - 646.990\_Stats.

Implemented: OL 1997, Ch. 310 (SB 414), ORS 646.905 - 646.990 & 183\_Hist.: AD 19-1997, f. 12-9-97, cert. ef. 1-1-98; DOA 5-2002, f. & cert. ef. 1-28-02; DOA 17-2006, f. & cert. ef. 9-26-06; DOA 8-2008, f. & cert. ef. 2-15-08; DOA 12-2008(Temp), f. 3-14-08, cert. ef. 3-17-08 thru 9-12-08; DOA 21-2008, f. & cert. ef. 9-11-08