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RULES:
603-027-0410, 603-027-0420, 603-027-0430, 603-027-0490

AMEND: 603-027-0410

RULE TITLE: Definitions

NOTICE FILED DATE: 09/24/2021

RULE SUMMARY: Definitions relevant to ODA's motor fuel regulations.

RULE TEXT:
(1) "Accredited Laboratory" means a laboratory that is currently accredited by an independent laboratory accrediting body for analyzing motor fuels using ASTM International test procedures and specifications.
(2) "Agricultural Product" means a product produced via the cultivation of crops including corn, sugar beets, sugar cane, algae, vegetable oils, animal fats, and livestock. Agricultural products include non-food crops such as grasses and trees which may be used as biomass to produce biomass-based fuels. This definition provides a list of example products to help explain the scope of term. This list of examples is not intended to limit the types of agricultural products covered by the term.
(3) "Alcohol" means a volatile flammable liquid having the general formula CnH(2n+1)OH.
(4) "ASTM" means ASTM International, the international 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.
(5) "Antiknock Index (AKI) "means the arithmetic average of the Research Octane Number (RON) and Motor Octane Number (MON): AKI=(RON+MON)/2.
(6) "Automotive Fuel Rating" means;
(a) for gasoline, the octane rating;
(b) for an alternative liquid automotive fuel other than biodiesel, biomass-based diesel, biodiesel blends, biomass-based diesel blends, and ethanol flex fuels, the commonly used name of the fuel with a disclosure of the amount, expressed as the minimum percentage by volume, of the principal component of the fuel. A disclosure of other components, expressed as the minimum percentage by volume, may be included, if desired;
(c) for biomass-based diesel, biodiesel, biomass-based diesel blends with more than 5 percent biomass-based diesel, and

biodiesel blends with more than 5 percent biodiesel, a disclosure of the biomass-based diesel or biodiesel component, expressed as the percentage by volume;
(d) for ethanol flex fuels, a disclosure of the ethanol component, expressed as the percentage by volume and the text “Use Only in Flex-Fuel Vehicles/May Harm Other Engines.”

NOTE: Automotive Fuel Rating as defined here is the same as it is defined in 16 CFR Part 306.

(7) "Automotive Gasoline, Automotive Gasoline-Oxygenate Blend" means gasoline other than aviation gasoline.
(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 non-retail 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) "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 other than palm oil.
(12) “Biomass” means organic matter that is available on a renewable or recurring basis including agricultural products and waste material excluding wood that has been treated with creosote, pentachlorophenol, inorganic arsenic, or other inorganic chemical compounds. Biomass includes:
(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, and;
(b) wood material from hardwood timber described in ORS 321.267(3), and;
(c) agricultural residues, and;
(d) offal and tallow from animal rendering, and;
(e) food wastes collected as provided under ORS Chapter 459 or 459A, and;
(f) yard or wood debris collected as provided under ORS Chapter 459 or 459A, and;
(g) wastewater solids, and;
(h) agricultural products, and;
(i) municipal solid waste.
(13) “Biomass-Based Diesel”, also referred to as Other Renewable Diesel and Renewable Diesel, means a conventional diesel fuel that is derived from biomass.
(14) “Certificate of analysis” means documents that both certify the proportion of biodiesel feedstock sourced outside of Oregon, Washington, Idaho, and Montana and verify that biodiesel has been analyzed and complies with the following specifications as they are defined in ASTM D6751, “Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels”;
(a) Flash point;
(b) Acid number;
(c) Cloud point;
(d) Water and sediment;
(e) Visual appearance;
(f) Free glycerin;
(g) Total glycerin;
(h) Oxidation stability;
(i) Sulfur.
(15) "Cetane Number” the numerical representation of the combustion quality of a liquid compression-ignition fuel in a

range from 0 – 100 as measured using test method ASTM D613 “Standard Test Method for Cetane Number of Diesel Fuel Oil”

(16) "Dealer" means any motor vehicle fuel retailer dealer, non-retail dealer or wholesale dealer.

(17) “Denatured Fuel Ethanol” means ethyl-alcohol which has been denatured rending it suitable as an automotive fuel additive yet unfit for human consumption.

(18) "Director" means the Director of Agriculture.

(19) "Diesel Fuel" means a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine.

(20) "Distillate." means any product obtained by condensing the vapors given off by boiling petroleum or its products.

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

(22) “E0” means gasoline that contains no ethanol. E0 is also neat gasoline and it is ethanol-exempt gasoline when its octane rating is less than 91.

(23) “E10” means a gasoline-ethanol blend that contains at least 9 and no more than 10 volume percent denatured fuel ethanol.

(24) “E15” means a gasoline-ethanol blend that contains more than 10 and no more than 15 volume percent denatured fuel ethanol.

(25) "E85” means Ethanol flex fuel containing 51 to 83 volume percent ethanol.

(26) "Ethanol" means ethyl-alcohol.

(27) "Gasoline" means any fuel sold for use in spark ignition engines.

(28) "Gasoline-Oxygenate Blend" means a fuel consisting primarily of gasoline blended with aliphatic ethers and alcohols.

(29) "Lead Substitute" means an EPA-registered gasoline additive suitable, when added in small amounts to gasoline, to reduce or prevent exhaust valve seat wear in automotive engines that were originally designed to operate on leaded gasoline.

(30) 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.

(31) "Lubricity" means a qualitative term describing the ability of a fluid to reduce friction between surfaces in relative motion under load.

(32) "Methanol" means methyl-alcohol.

(33) "Motor Octane Number” the numerical representation of a liquid spark-ignition fuel’s resistance to knock in a range from 0 – 120 as measured using test method ASTM D2700, “Standard Test Method for Motor Octane Number of Spark-Ignition Engine Fuel”.

(34) "Motor Vehicles" means all vehicles, vessels, watercraft, engines, machines, or mechanical contrivances that are propelled by internal combustion engines or motors.

(35) "Motor Vehicle Fuel" means gasoline, gasoline-ethanol blends, diesel, biomass-based diesel, biomass-based 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.

(36) "Non-retail 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 non-retail customers.

(37) "Octane Rating" means anti-knock index.

(38) "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.

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

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

(41) “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.
(42) “Renewable Diesel” means biomass-based diesel.
(43) "Research Octane Number" the numerical representation of a liquid spark-ignition fuel’s resistance to knock in a range from 0 – 120 as measured using test method ASTM D2699, “Standard Test Method for Research Octane Number of Spark-Ignition Engine Fuel”.
(44) "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.
(45) "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.
(46) "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).
(47) "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 non-retail dealer, or another wholesale dealer.
(48) "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.

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 646.905 - 646.990

STATUTES/OTHER IMPLEMENTED: ORS 646.905 - 646.990, ORS 183

AMEND: 603-027-0420

RULE TITLE: Standard Fuel Specifications

NOTICE FILED DATE: 09/24/2021

RULE SUMMARY: Defines fuel quality specifications and biofuel blending requirements for motor fuels sold or offered for sale in Oregon.

RULE TEXT:

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

(a) The ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" (D4814) 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 (EPA) (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 D4814; or

(B) the blend shall meet the requirements of D4814; or

(C) the base gasoline used in such blends shall meet all the requirements of D4814 except distillation, and the blend shall meet the distillation requirements of the D4814 specification.

(b) Blends of gasoline and ethanol shall not exceed the D4814 vapor pressure standard by more than 1.0 psi.

(c) Blends of gasoline and ethanol shall meet the volatility requirements of 40 CFR Part 1090.215.

NOTE: D4814 as referenced in 603-027-0420(16) is written to be consistent with the EPA fuel regulations prior to EPA's Fuels Regulatory Streamlining amendments effective Jan 1, 2021. 603-027-0420(16)(g) incorporates D4814 by reference with amendments designed to make the standard consistent with the EPA fuel regulations in the State of Oregon starting Jan 1, 2021 [Reference 'Fuels Regulatory Streamlining' 85FR78412, Dec. 4, 2020].

NOTE: ORS 646.913(2)(b) cites the EPA gasoline volatility requirements found in 40 CFR Part 80. As of January 1, 2021 the gasoline volatility requirements formerly found in 40 CFR Part 80.27 "Controls and prohibitions on gasoline volatility" were renumbered to 40 CFR Part 1090.215 "Gasoline RVP Standards" [Reference 'Fuels Regulatory Streamlining' 85FR78412, Dec. 4, 2020]. If there is a discrepancy between the EPA fuel regulations and the standards defined in D4814 as modified by 603-027-0420(16)(g) then the EPA regulation shall prevail.

(d) Minimum Motor Octane Number. The minimum motor octane number must not be less than 82 for gasoline with an AKI of 87 or greater.

(e) 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) Denatured Fuel Ethanol intended for blending with gasoline shall meet the requirements of ASTM D4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel." and the ethanol component shall be derived from agricultural products (including corn, sugar beets, sugar cane, cellulosic plant fibers from grasses and trees, etc.) , woody waste, residues, municipal solid waste, or other biomass.

(3) Gasoline-Ethanol Blends Required

(a) Except as provided in OAR 603-027-0420(3)(b), all retail dealers, non-retail dealers, or wholesale dealers may only sell or offer for sale gasoline that contains at least 10 percent denatured fuel ethanol by volume. Gasoline containing at least 9.2 volume percent anhydrous ethanol is considered to meet this requirement.

(b) It is prohibited to blend E0 gasoline and E10 gasoline to produce a midgrade gasoline. The resulting blend violates 603-027-0420(3)(a).

(c) A retail dealer, non-retail dealer, or wholesale dealer may sell or offer for sale gasoline that is not blended with

ethanol if the gasoline has an octane rating of 91 or above or if it 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, or;
(B) an aircraft that has been issued an experimental certificate, described in 14 CFR 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, or;
(C) a light-sport aircraft, as defined in 14 CFR 1.1, that is required by the manufacturer's specifications to use gasoline that is intended for use in motor vehicles, or;
(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, or;
(E) an antique vehicle, as defined in ORS 801.125, or;
(F) a Class I all-terrain vehicle, as defined in ORS 801.190, or;
(G) a Class III all-terrain vehicle, as defined in ORS 801.194, or;
(H) a racing activity vehicle, as defined in ORS 801.404, or;
(I) a snowmobile, as defined in ORS 801.490, or;
(J) tools, including but not limited to lawn mowers, leaf blowers, and chain saws; or
(K) a watercraft.
(4) Gasoline Additive Restrictions.
(a) A wholesale dealer, retail dealer, or non-retail 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 CFR Part 79, and the ethanol combined with its denaturants complies with the requirements in 603-027-0420(2);
(B) methyl tertiary butyl ether (MTBE) 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) diisopropyl ether (DIPE),
(ii) ethyl tert-butyl ether (ETBE),
(iii) propanol, including all structural isomers,
(iv) tert-amyl methyl ether (TAME),
(v) tert-amyl alcohol (TAA), and
(vi) 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,
(A) the gasoline is used or disposed of outside of this state; and
(B) 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.
(d) It is prohibited to blend gasoline and gasoline-oxygenate blends with casinghead gasoline, absorption gasoline, drip gasoline, or natural gasoline after the gasoline has been sold, transferred, or otherwise removed from a refinery or terminal.
(5) Diesel Fuel, Biomass-Based Diesel Fuel, or Renewable Diesel Fuel shall meet either the requirements of ASTM

D975, "Standard Specification for Diesel Fuel Oils." when containing up to 5 volume percent biodiesel, or the requirements of ASTM D7467, "Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6-B20)" when containing not less than 5 and up to and including 20 volume percent diesel fuel.
(6) Winter or Winterized Diesel Fuel shall meet the requirements of ASTM D975, "Standard Specification for Diesel Fuel Oils" (D975) and have a cold flow performance measurement which meets the D975 tenth percentile minimum ambient air temperature charts and maps by either ASTM D2500, "Standard Test Method for Cloud Point of Petroleum Products and Liquid Fuels" or ASTM D4539, "Standard Test Method for Filterability of Diesel Fuels by Low-Temperature Flow Test (LTFT)". Winter or winterized diesel (low temperature operability) is only applicable October 1 - March 31 of the following year.
(7) Premium Diesel Fuel — All diesel fuels identified on retail and non-retail 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 D975, "Standard Specification for Diesel Fuel Oils" (D975) and must conform to the following requirements:
(a) Cetane Number — A minimum cetane number of 47.0 as determined by ASTM D613, "Standard Test Method for Cetane Number of Diesel Fuel Oil";
(b) Low Temperature Operability — A cold flow performance measurement which meets the D975 tenth percentile minimum ambient air temperature charts and maps by either ASTM D2500, "Standard Test Method for Cloud Point of Petroleum Products and Liquid Fuels" or ASTM D4539, "Standard Test Method for Filterability of Diesel Fuels by Low-Temperature Flow Test (LTFT)". Low temperature operability is only applicable October 1 - March 31 of the next year;
(c) Thermal Stability — A minimum reflectance measurement of 80 percent as determined by ASTM D6468, "Standard Test Method for High Temperature Stability of Middle Distillate Fuels" (180 minutes, 150 0C);
(d) Lubricity — A maximum wear scar diameter of 520 microns as determined by ASTM D6079, "Standard Test Method for Evaluating Lubricity of Diesel Fuels by the High-Frequency Reciprocating Rig (HFRR)". 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 must:
(a) Meet the requirements of ASTM D6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels";
(b) Be analyzed and issued a Certificate of Analysis for each batch or production lot produced in or imported into Oregon prior to blending, sale, or offer for sale in Oregon. The Certificates of Analysis expire 45 days following the date the biodiesel sample was obtained.
(c) Biodiesel must be analyzed for and comply with the visual appearance test (ASTM D4176, "Standard Test Method for Free Water and Particulate Contamination in Distillate Fuels (Visual Inspection Procedures)") upon its first receipt at a wholesale facility and prior to commingling with existing product.
(d) Prior to blending, sale, or offer for sale in Oregon, biodiesel must be analyzed and the Certificate of Analysis issued by:
(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 D6751, "Standard Specification for Biodiesel Fuel Blend Stock (B100) for Middle Distillate Fuels" 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 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) For biodiesel blends up to and including 20 volume percent see OAR 603-027-0420(5)
(b) Blends of biodiesel and diesel fuels greater than B20 must meet the following requirements:
(A) The base diesel fuel, including petroleum diesel, biomass-based diesel, or renewable diesel must meet the requirements OAR 603-027-0420(5), and
(B) The biodiesel blend stock must meet the requirements in OAR 603-027-0420(8).
(10) Biomass-Based Diesel; for biomass-based diesel and renewable diesel see the requirements in OAR 603-027-0420(5).

NOTE: Biomass-Based Diesel (aka renewable diesel) is defined in ORS 646.905 (2019) as "a diesel fuel substitute, produced from nonfossil renewable resources, that has an established ASTM standard, is approved by the United States Environmental Protection Agency, meets specifications of the National Conference on Weights and Measures, and complies with standards promulgated under ORS 646.957."
The National Conference on Weight and Measures model regulations for motor fuels are published in National Institute of Standards and Technology (NIST) Handbook 130, Section G. Uniform Fuels and Automotive Lubricants Regulation. There is no explicit standard for biomass-based or renewable diesel in this document. Similarly, there is no ASTM standard which explicitly includes either biomass-based diesel or renewable diesel within its scope. However, biomass-based diesel is designed to be chemically similar to conventional petroleum diesel using D975 specifications as a guide for production. The principle difference between conventional petroleum based diesel fuel and biomass-based or renewable diesel is whether the feedstock is pumped from the ground or sourced from lipids obtained from agricultural or waste products. The ASTM specifications for conventional petroleum diesel are thus appropriate and consistent with this statutory requirement.
The National Institute of Standards and Technology (NIST) Handbook 130 Section G. Uniform Fuels and Automotive Lubricants Regulation Sub-section 2.2(a) Diesel Fuel specifications also require conventional petroleum diesel fuel to meet D975 specifications hence requiring the fuel to meet the these specifications is equivalent to requiring the fuel to meet specifications of the National Conference on Weights and Measures.

(11) Biomass-Based Diesel Blends; for biomass-based diesel blends see the requirements in OAR 603-027-0420(5).
(12) Biodiesel Blends, Biomass-Based Blends, or a Combination of Biodiesel and Biomass-Based Diesel Blends Required.
(a) Except as provided in subsection (d) of this section, a retail dealer, non-retail dealer, or wholesale dealer may only sell or offer for sale diesel fuel in Oregon containing:
(A) at least five percent biodiesel by volume, or
(B) biomass-based diesel with at least five percent renewable component by volume, or
(C) five percent or less biodiesel by volume and five percent or less biomass-based diesel by volume provided the combined total of biodiesel and biomass-based diesel is at least five percent by volume.
(b) Exemption. The minimum biodiesel fuel content requirements in OAR 603-027-0420(12)(a) do not apply to diesel fuel:
(A) sold or offered for sale for use by railroad locomotives, marine engines, or home heating, or facilities that store more than 50 gallons of diesel fuel for use in emergency power generation; or
(B) that otherwise meets the requirements in this section but to which there have been added substances to prevent congealing or gelling of diesel fuel containing biodiesel or biomass-based diesel. This exemption applies only to diesel fuel sold or offered for sale during the period from October 1 of any year to February 28 of the following year. This exception applies to blends of grade No. 1 diesel fuel and grade No. 2 diesel fuel as they are defined in ASTM D975, "Standard Specification for Diesel Fuel Oils" where the grade No. 1 component (commonly referred to as kerosene) provides enhanced cold weather performance and the grade No. 2 component meets the blending requirement in OAR

603-027-0420(12)(a).
(13) Aviation Gasoline. shall meet:
(a) ASTM D910, “Standard Specification Leaded for Aviation Gasolines”, or
(b) ASTM D6227, “Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component”, or
(c) ASTM 7547, “Standard Specification for Hydrocarbon Unleaded Aviation Gasoline”.
(14) Ethanol Flex Fuel. – Ethanol flex fuel is covered by one of two ASTM standards based on the ethanol concentration of blend:
(a) Ethanol flex fuel containing 51 to 83 volume percent ethanol (commonly called E85) shall meet ASTM D5798, “Standard Specification for Ethanol Fuel Blends for Flexible Fuel Automotive Spark-Ignition Engines”; and
(b) Ethanol flex fuel containing 16 to 50 volume percent ethanol shall be blended, stored, delivered and offered for consumption in accordance with ASTM D7794, “Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible Fuel Vehicles with Automotive Spark-Ignition Engines.”
(15) M85 Fuel Methanol shall meet the requirements of ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines."
(16) All ASTM documents incorporated by reference in this rule are those versions found in the 2021 Annual Book of ASTM Standards Section 5: Petroleum Products, Lubricants, and Fossil Fuels unless noted otherwise. Documents referenced are:
(a) ASTM 7547, “Standard Specification for Hydrocarbon Unleaded Aviation Gasoline”,
(b) ASTM D 5797, "Standard Specification for Fuel Methanol (M70-M85) for Automotive Spark-Ignition Engines",
(c) ASTM D2500, “Standard Test Method for Cloud Point of Petroleum Products and Liquid Fuels”,
(d) ASTM D4176, “Standard Test Method for Free Water and Particulate Contamination in Distillate Fuels (Visual Inspection Procedures)”,
(e) ASTM D4539, “Standard Test Method for Filterability of Diesel Fuels by Low-Temperature Flow Test (LTFT)”,
(f) ASTM D4806, "Standard Specification for Denatured Fuel Ethanol for Blending with Gasolines for Use as Automotive Spark-Ignition Engine Fuel",
(g) ASTM D4814, "Standard Specification for Automotive Spark-Ignition Engine Fuel" with the following amendments;
(A) In Section 2.2 Government Regulations: “United States Code of Federal Regulations, Title 40 Part 80.27 (d)” is replaced by “United States Code of Federal Regulations, Title 40 Part 1090”
(B) In Table 1 footnote I; all references to 40 CFR Part 80.2 are replaced by 40 CFR Part 1090.80. The footnote is modified to read;
The DI specication limits are applicable at the renery or import facility as dened by 40 CFR Part 1090.80 and are not subject to correction for precision of the test method.
(C) In Table 4 footnote A is modified to read;
For the period May 1 through September 15 (June 1 through September 15 for retail dealers, non-retail dealers, and end users), the vapor pressure limits are those found in 40 CFR Part 1090. In the State of Oregon the EPA vapor pressure limits are; 7.8 psi in the Oregon portion of the Portland-Vancouver Air Quality Maintenance Area (AQMA) and the Salem Kaiser Area Transportation Study area (SKATS) [Reference Portland-Vancouver Air Quality Maintenance Area (Oregon Portion) and Salem-Keizer Area Ozone Maintenance Plan (adopted by the Environmental Quality Commission February 22, 2007 and 40 CFR Part 1090.215(a)(2)] and; 9.0 in all other areas of the state. Blends of gasoline and ethanol may be allowed a 1 psi waiver to these limits per 40 CFR Part 1090.215(b) during this time.
(D) Table 5 is modified to read;
Oregon - The Oregon portion of the Portland-Vancouver Air Quality Maintenance Area (AQMA) and the Salem Kaiser Area Transportation Study Area (SKATS) [Reference Portland-Vancouver Air Quality Maintenance Area (Oregon Portion) and Salem-Keizer Area Ozone Maintenance Plan (adopted by the Environmental Quality Commission February 22, 2007 and 40 CFR Part 1090.215(a)(2)]
(E) In In paragraph X3.1.2 all references to 40 CFR Part 80 are replaced by 40 CFR Part 1090. The paragraph is

modified to read;
“Details of the EPA regulations and test methods are available in Part 1090 of Title 40 of the Code of Federal Regulations (40 CFR Part 1090).”
(F) Paragraph X3.1.3 is modified to read;
In the State of Oregon the EPA vapor pressure limits are; 7.8 psi in the Oregon portion of the Portland-Vancouver Air Quality Maintenance Area (AQMA) and the Salem Kaiser Area Transportation Study area (SKATS) [Reference Portland-Vancouver Air Quality Maintenance Area (Oregon Portion) and Salem-Keizer Area Ozone Maintenance Plan (adopted by the Environmental Quality Commission February 22, 2007 and 40 CFR Part 1090.215(a)(2)] and; 9.0 in all other areas of the state from May 1 through Sept 15 (June 1 through Sept 15 for retail dealers, non-retail dealers, and end users). Blends of gasoline and ethanol may be allowed a 1 psi waiver to these limits per 40 CFR Part 1090.215(b) during this time.
(G) X3.8 footnote 26; all the reference to 40 CFR Part 80.41 are replaced by 40 CFR Part 1090.220. The footnote is modified to read;
Code of Federal Regulations, Title 40, Part 1090, Section 220.
(H) In paragraph X 8.2.2.1 the reference to 40 CFR Part 80.27(d) is replaced by 40 CFR Part 1090.215. The paragraph is modified to read;
In the United States - The decrease in ethanol concentration could result in a fuel that is no longer acceptable for the volatility waiver allowed in the U.S. under certain conditions. For example, if the ethanol concentration falls below. 9% by volume the blend would no longer be eligible for the waiver under 40 CFR 1090.215(b).

NOTE: These amendments to ASTM D4814 result from amendments to EPA’s fuel regulations effective Jan 1, 2021 [Reference Federal Register 85FR78412 ‘Fuels Regulatory Streamlining’ published Dec 4, 2020] which are not incorporated in ASTM D4814-21a, "Standard Specification for Automotive Spark-Ignition Engine Fuel". In these amendments to the EPA fuel regulations the requirements in 40 CFR Part 80 were largely renumbered to 40 CFR Part 1090. The amendments made in this rule are to make this document consistent with current EPA requirements as they apply to the State of Oregon.

(h) ASTM D5798, “Standard Specification for Ethanol Fuel Blends for Flexible Fuel Automotive Spark-Ignition Engines”,
(i) ASTM D6079, “Standard Test Method for Evaluating Lubricity of Diesel Fuels by the High-Frequency Reciprocating Rig (HFRR)”,
(j) ASTM D613, “Standard Test Method for Cetane Number of Diesel Fuel Oil”,
(k) ASTM D6227, “Standard Specification for Unleaded Aviation Gasoline Containing a Non-hydrocarbon Component”,
(l) ASTM D6468, “Standard Test Method for High Temperature Stability of Middle Distillate Fuels”,
(m) ASTM D6751, "Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels",
(n) ASTM D7467, ”Standard Specification for Diesel Fuel Oil, Biodiesel Blend (B6-B20)”,
(o) ASTM D7794, “Standard Practice for Blending Mid-Level Ethanol Fuel Blends for Flexible Fuel Vehicles with Automotive Spark-Ignition Engines”,
(p) ASTM D910, “Standard Specification Leaded for Aviation Gasolines”, and
(q) ASTM D975, "Standard Specification for Diesel Fuel Oils".

STATUTORY/OTHER AUTHORITY: ORS 561.190, 646.905 - 646.990, 1997 OL Ch. 310 (SB 414)

STATUTES/OTHER IMPLEMENTED: 646.905 - 646.990, 1997 OL Ch. 310 (SB 414), ORS 183

AMEND: 603-027-0430

RULE TITLE: Classification and Method of Sale of Petroleum Products

NOTICE FILED DATE: 09/24/2021

RULE SUMMARY: Defines requirements for product transfer documents required for wholesale fuel transactions and motor fuel dispenser advertising and labeling requirements.

RULE TEXT:

(1) General Considerations:

(a) Documentation.

(A) On each occasion when any person transfers custody or title to any motor vehicle fuel, other than when fuel is sold or dispensed to the ultimate end user at a retail dealer or non-retail dealer, the transferor must provide the transferee product transfer documents (PTDs) that comply with the requirements of 40 CFR Part 1090.1100, 16 CFR Part 306 and;

(i) for diesel fuel, includes the word “winter” or “winterized” or similar certifying that the fuel complies with the winter diesel fuel requirements in 603-027-0420(6) if it will be identified as winter or winterized diesel fuel per 603-027-0430(4); and

(ii) for diesel fuel, includes the word “premium” or similar certifying that the fuel complies with the premium diesel fuel requirements in 603-027-0420(7) if it will be identified as premium diesel fuel per 603-027-0430(5); and

(iii) for diesel fuel, the volume percent biodiesel and biomass-based diesel used to meet requirements in 603-027-0420(12);

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

(C) Each biodiesel producer, each operator of a biodiesel bulk facility and each person who imports biodiesel into this state to be sold, transferred, or delivered in this state shall keep, on a monthly basis at the person’s registered place of business for at least one year, the certificate of analysis and the visual appearance records that are performed upon first receipt at a wholesale facility prior to commingling with existing product for each batch or production lot of biodiesel sold, transferred, or delivered into this state.

(D) All retail dealers, non-retail 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.

(E) Retail dealers and non-retail dealers shall maintain at their facilities the product transfer documents and automotive fuel rating certifications per 16 CFR Part 306 for the three most recent motor vehicle fuel deliveries to the facility for each type and grade of fuel sold or offered for sale. These documents shall be made available for inspection by ODA staff members upon request.

(b) Retail and Non-retail Gasoline Dispenser Labeling. All retail and non-retail motor vehicle fuel dispensing devices must identify conspicuously on each face of the dispenser(s),

(A) the type or identification of the product (except gasoline), and

(B) the grade of the product; 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" unless otherwise specified in this rule, and

(C) the automotive fuel rating as defined in 16 CFR Part 306 if applicable.

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

(a) Posting of grade; Gasoline grades may be identified by octane or using industry standard grade names including “Unleaded”, “Mid-Grade”, and “Premium” subject to the following limitations: It is prohibited to describe a gasoline grade as;

(A) premium, super, supreme and high test or similar term suggesting superior performance unless it has an octane

rating of at least 91, or
(B) midgrade or mid-grade or similar term unless it has an octane rating of at least 89, or
(C) regular, unleaded, or similar term unless it has an octane rating of at least 87.
(b) Posting of Antiknock Index Required. All automotive gasoline dispensers shall be labeled with the antiknock index in accordance with 16 CFR Part 306 in a clear and unambiguous manner. The antiknock index or octane rating is the automotive fuel rating for gasoline as required in 16 CFR Part 306.
(c) Posting of Oxygenate Required; Oxygenate label(s) shall be located on each face in the upper 50 percent of the dispenser front panels in a position clear and conspicuous from the normal customer position while fueling. Unless otherwise specified the lettering must be in type at least 12.7 millimeters (1/2 inch) in height, 1.5 millimeter (1/16 inch) stroke (width of type).
(A) If the gasoline offered for sale is E10 then;
(i) the gasoline dispenser must be labeled with an oxygenate label stating, “CONTAINS 10% ETHANOL”, or other similar unambiguous language, and
(ii) the label shall not say, “Contains Up To 10% Ethanol”, “May Contain Ethanol”, or any other similar language suggesting that the gasoline offered for sale contains lessor quantities of ethanol, and
(iii) if a gasoline dispenser offers additional gasoline products other than E10 then the label placement must make it clear which start buttons correspond to E10 gasolines.
(B) If the gasoline offered for sale is E15 then an oxygenate label must be placed on the dispenser meeting all of the requirements of 40 CFR Part 1090.1510. If a gasoline dispenser offers additional gasoline products other than E15 then the label placement must make is clear which start buttons correspond to E15 gasolines.
(C) If the gasoline offered for sale at retail contains at least 1.5 mass percent oxygen other than E10 (reference 603-027-0430(2)(b)(A)) or E15 (reference 603-027-0430(2)(b)(B)) then it shall be identified as “with” or “containing” (or similar wording) the predominant oxygenate present. The oxygenate contributing the largest mass percent oxygen to the blend shall be considered the predominant oxygenate.
(D) If the gasoline offered for sale at retail contains more than 0.15 mass percent oxygen from methanol then it shall be identified as “with” or “containing” methanol in addition to any other applicable oxygenate labeling requirements in this section.
(d) If non-ethanol blended gasoline (E0), other than gasoline rated at 91 octane or higher, is offered for sale then the dispensers shall be labeled, (“NON-ETHANOL BLENDED GASOLINE FOR EXEMPTED USE ONLY (ORS 646.913)” in 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 so that it is clear and conspicuous from the normal customer position while fueling.
(e) 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, but not necessarily on the dispenser, that sells or offers for sale non-ethanol blended gasoline. The exceptions shall be posted;
(A) in 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,
“NON-ETHANOL BLENDED GASOLINE FOR USE IN THE FOLLOWING APPLICATIONS ONLY;”
(B) and in capital letters and type at least 3 millimeters (1/8 inch) in height, 0.4 millimeter (1/64 inch) stroke (width of type).
“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)"

(f) Use of Lead Substitute Must Be Disclosed. If lead substitute gasoline is offered for sale then the dispensing device shall display the grade name followed by "With a Lead Substitute" or similar unambiguous language (e.g. "Unleaded With 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.

(3) Diesel Fuel (including blends of biodiesel containing no more than 20 volume percent biodiesel and blends of biomass-based diesel):

(a) Diesel fuel is identified as "Diesel" (however the fuel may be identified as "Biodiesel Blend", "Biomass-Based Diesel Blend", or "Renewable Diesel Blend" if the identification is accurate);

(A) grades of diesel;

(i) are those identified in ASTM D975, "Standard Specification for Diesel Fuel Oils." (e.g. No. 1-D or No. 2-D) when the fuel contains no more than 5 volume percent biodiesel. Optionally the fuel grade may be identified as "B5".

(ii) the biodiesel blend (e.g. B5, B10, B20) or the blend range (e.g. B5-B20, B6-B20) if the fuel contains no more than 20 volume percent biodiesel.

(b) FTC Label Requirements;

(A) If the diesel fuel contains more than 5 volume percent biodiesel then the dispenser must also be labeled as required in 16 CFR Part 306.

(B) If the diesel fuel contains more than 5 volume percent biomass-based diesel then the dispenser must also be labeled as required in 16 CFR Part 306.

(c) Position of Labels. 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 normal customer position while fueling, in a type at least 12.7 millimeter (1/2 in) in height, 1.5 millimeter (1/16 in) stroke (width of type) unless otherwise specified.

(4) Winter or Winterized Diesel Fuel: In addition to the requirements of 603-027-0430(3) the fuel may be identified as "Winter Diesel" or "Winterized Diesel" provided it meets the winter diesel specification of 603-027-0420(6) and is certified as such on the product transfer documents. The labels may be a pump topper or similar sign clearly associated with the dispenser where winterized diesel is sold.

(5) Premium Diesel Fuel: In addition to the requirements of 603-027-0430(3) the fuel may be identified as "Premium Diesel" or similar term suggesting superior quality provided it meets the premium diesel specification of 603-027-0420(7) and is certified as such on the product transfer documents. The label may be a pump topper or similar sign clearly associated with the dispenser where premium diesel is sold.

(6) Biodiesel Blends greater than 20 volume percent: Biodiesel Blends containing more than 20 volume percent biodiesel shall be identified as "Biodiesel Blend" or with the letter "B" followed by the volume percent biodiesel in the blend (i.e. "B99"). Grade labeling does not apply to this fuel. Additional Label Requirements for biodiesel blends;

(A) The dispenser must be labeled as required in 16 CFR Part 306 in a position clear and conspicuous from the normal customer position while fueling, and
(B) “Consult Vehicle Manufacturer Fuel Recommendations”, posted on the dispenser front panels in a position clear and conspicuous from the normal customer’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
(7) Biomass-Based Diesel Blends: Biomass-Based Diesel Blends are identified as “Biomass-Based Diesel Blend” or “Renewable Diesel Blend”, or “Diesel”. Dispensers of biomass-based diesel blends are labeled as required in 603-027-0430(3).
(8) Aviation Gasoline shall be identified by grades as recognized in EI Standard 1542 “Identification markings for dedicated aviation fuel manufacturing and distribution facilities, airport storage and mobile fueling equipment” (July, 2012), or the appropriate ASTM standards in 603-027-0420(13).
(9) Ethanol Flex Fuel shall be identified as Ethanol Flex Fuel or EXX Flex Fuel, or EXX and ethanol flex fuel dispensers shall be labeled as required in 16 CFR 306 in a position clear and conspicuous from the normal customer position while fueling.

NOTE: for E15 labeling requirements see 603-027-0430(2).

(10) Fuel Methanol shall be identified as M85, and fuel methanol dispensers:
(a) shall be labeled as required by 16 CFR 306 in a in a position clear and conspicuous from the normal customer position while fueling, and
(b) shall be labeled “For Use in Vehicles Capable of Using M85 Only.” in a position clear and conspicuous from the normal customer position while fueling posted in the upper 50% of the dispenser front panel in a type of at least 12.7mm (1/2 in) in height, 1.5 mm (1/16 in) stroke (width of type).
(11) Liquefied Natural Gas (LNG) shall be identified by the term “Liquefied Natural Gas” or “LNG.”.
(a) FTC labeling; LNG shall be labeled as required by 16 CFR Part 306.
(b) Method of Sale; liquified natural gas may be sold either by
(A) weight, or
(B) by a diesel gallon equivalent (DGE) where 1 DGE is equivalent to 6.059 lb of liquified natural gas

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 646.905 - 646.990, ORS 646.945- 646.963

STATUTES/OTHER IMPLEMENTED: ORS 561.190, ORS 646.905 - 646.990, ORS 183

AMEND: 603-027-0490

RULE TITLE: Enforcement Proceedings; Civil Penalties

NOTICE FILED DATE: 09/24/2021

RULE SUMMARY: Defines penalties for violations of ODA's motor fuel regulations.

RULE TEXT:

(1) Consolidation of Proceedings: Notwithstanding that each and every violation of any provision of ORS 646.947, 646.949 or 646.953, rules adopted under ORS 646.957 or orders issued under ORS 646.953 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 603-027-0470 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 ORS 646.947, 646.949 or 646.953, rules adopted under ORS 646.957 or orders issued under ORS 646.953. The amount of any civil penalty shall be determined per the schedule in 603-027-0490(10) and

shall not exceed $10,000. In establishing penalty assessments, the Director will consider the gravity of the violation; the scope of the violation; the past history of the person incurring the penalty; and in the case of a penalty to be imposed on a retail dealer or non-retail dealer, both the degree of knowledge by the dealer of the violation, and the demonstrated cooperativeness shown by the dealer to cure the violation.
(10) Civil penalty schedule;
(a) Gravity 1 (Minor);
(A) 1st violation, Notice of Non-Compliance;
(B) 2nd violation, Notice of Violation;
(C) 3rd violation, civil penalty not less than $100 and not more than $500;
(b) Gravity 2 (Moderate);
(A) 1st violation, Notice of Violation;
(B) 2nd violation, civil penalty not less than $501 and not more than $1000;
(C) 3rd violation, civil penalty not less than $1001 and not more than $5000;
(c) Gravity 3 (Major);
(A) 1st violation, civil penalty of $500;
(B) 2nd violation, civil penalty not less than $501 and not more than $2500;
(C) 3rd violation, civil penalty not less than $2501 and not more than $5000.
(11) 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) Motor vehicle fuel dispenser not labeled with product type, grade (if applicable), and automotive fuel rating (if applicable)
(ii) Gasoline and Gasoline-Oxygenate Blend dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(2);
(iii) Diesel (including some biodiesel and biomass-based diesel blend) dispenser not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(3);
(iv) Winter or winterized diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(4);
(v) Premium diesel fuel dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(1)(b) and 603-027-0430(5);
(vi) Aviation gasoline dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(8);
(vii) Ethanol Flex Fuel dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(9);
(viii) Fuel methanol dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(10);
(ix) Biodiesel blend greater than 20 volume percent biodiesel not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(6);
(x) Liquified Natural Gas (LNG) dispenser(s) not labeled in compliance with OAR 603-027-0430(1)(b) and 603-027-0430(11);
(xi) Liquified Natural Gas (LNG) not sold by weight or DGE as specified in 603-027-0430(11) or sold by DGE using inaccurate conversion factor per 603-027-0430(11).
(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:
(i) Incorrect, incomplete, or missing product transfer documents when custody or title of motor vehicle fuel is transferred to a person or entity other than the ultimate end user at a retail or Non-Retail dealer. (Ref. OAR 603-027-0430(1)(a)(A)).

(ii) Motor vehicle fuel delivery documentation not maintained for at least one year at the person's registered place of business (Ref. OAR 603-027-0430(1)(a)(B)).
(D) Certificate of Analysis Documentation; Biodiesel producer, operator of a biodiesel bulk facility, and each person who imports biodiesel 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 sold or delivered in Oregon (Ref. OAR 603-027-0430(1)(a)(C));
(E) Visual Appearance Analysis Documentation; Biodiesel producer, operator of a biodiesel bulk facility, and each person who imports biodiesel not keeping on a monthly basis for at least one year, at the person's registered place of business the analysis records for visual appearance tests that are performed upon first receipt at a wholesale facility prior to commingling with existing product for each batch or production lot of biodiesel sold or delivered in Oregon (Ref. OAR 603-027-0430(1)(a)(C));
(F) Documentation; Retail Dealer, Non-Retail 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(1)(a)(D));
(G) Documentation; Retail Dealer and Non-Retail Dealer; Product transfer documents and automotive fuel rating certifications not maintained at their facilities for the three most recent deliveries to the facility for each type and grade of fuel sold or offered for sale (Ref. OAR 603-027-0430(1)(a)(E)).
(b) Gravity 2 (Moderate):
(A) 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 fuel exceed allowable limits (Ref. OAR 603-027-0440);
(B) Water phase in motor vehicle fuel storage tank(s) for gasoline, diesel, biomass-based diesel, biomass-based diesel blends, gasoline-ether, and other fuels exceed allowable limits (Ref. OAR 603-027-0440).
(c) GRAVITY 3 (Major):
(A) Gasoline sold or offered for sale by a wholesale dealer, retail dealer, or non-retail dealer does not meet the requirements of 603-027-0420(1);
(B) Gasoline sold or offered for sale by a wholesale dealer, retail dealer, or non-retail dealer contains one or more prohibited additives specified in 603-027-0420(4);
(C) Denatured fuel ethanol intended for blending with gasoline does not meet the requirements of 603-027-0420(2);
(D) Gasoline sold or offered for sale by wholesale dealer, retail dealer, or non-retail dealer does not meet gasoline-ethanol blending requirements in 603-028-0420(3);
(E) Diesel Fuel, Biomass-Based Diesel Fuel, or Renewable Diesel Fuel including fuels blended with up to and including 20 volume percent biodiesel sold or offered for sale by wholesale dealer, retail dealer, or non-retail dealer does not meet the requirements of 603-027-0420(5);
(F) Winter or Winterized Diesel fuel sold or offered for sale by wholesale dealer, retail dealer, or non-retail dealer does not meet the requirements of 603-027-0420(6);
(G) Premium Diesel fuel sold or offered for sale by wholesale dealer, retail dealer, or non-retail dealer does not meet the requirements of 603-027-0420(7);
(H) Biodiesel intended for blending with diesel fuel does not meet the requirements of 603-027-0420(8);
(I) Biodiesel blend containing more than 20 volume percent biodiesel sold or offered for sale does not meet requirements of 603-027-0420(9);
(J) Biomass-based diesel fuel sold or offered for sale does not meet requirements of 603-027-0420(5);
(K) Biomass-based diesel blend fuel sold or offered for sale does not meet requirements of 603-027-0420(5);
(L) Diesel fuel sold or offered for sale does not blending requirements of 603-027-0430(12);
(M) Aviation gasoline sold or offered for sale does not meet the requirements of 603-027-0420(13);
(N) Ethanol Flex Fuel sold or offered for sale does not meet the requirements of 603-027-0420(14);
(O) M85 Fuel Methanol sold or offered for sale does not meet the requirements of 603-027-0420(15).

STATUTORY/OTHER AUTHORITY: ORS 561.190, ORS 646.905 - 646.990

STATUTES/OTHER IMPLEMENTED: ORS 646.905 - 646.990, ORS 183