§ 80.30 Liability for violations of diesel fuel control and prohibitions.

(a) Violations at refiners or importers facilities. Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a refinery or importer’s facility, the refiner or importer shall be deemed in violation.

(b) Violations at carrier facilities. Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a carrier’s facility, whether in a transport vehicle, in a storage facility, or elsewhere at the facility, the following parties shall be deemed in violation:

1. The carrier, except as provided in paragraph (g)(1) of this section; and
2. The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(c) Violations at branded distributor or reseller facilities. Where a violation of a diesel fuel standard set forth in § 80.29 is detected at a distributor or reseller’s facility which is operating under the corporate, trade or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

1. The distributor or reseller, except as provided in paragraph (g)(3) of this section;
2. The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and
3. The refiner under whose corporate, trade, or brand name (or that of any of its marketing subsidiaries) the distributor or reseller is operating, except as provided in paragraph (g)(4) of this section.

(d) Violations at unbranded distributor facilities. Where a violation of a diesel fuel standard set forth in § 80.29 is detected at the facility of a distributor not operating under a refiner’s corporate, trade, or brand name, or that of any of its marketing subsidiaries, the following shall be deemed in violation:

1. The distributor, except as provided in paragraph (g)(3) of this section;
2. The carrier (if any), if the carrier caused the diesel fuel to violate the

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relevant to whether that level would have been in compliance with the standard if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than the compliance methods in this paragraph (b), business records, and commercial documents.

(3) Determination of compliance with the requirements of this section other than the standards described in paragraph (a) of this section, and determination of liability for any violation of this section, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

(c) Transfer documents. (1) Any person that transfers custody or title of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164 shall provide documents to the transferee which state that such fuel meets the applicable standards for sulfur and cetane index or aromatic content under these regulations and is only for tax-exempt use in diesel motor vehicles as defined under section 4082 of the Internal Revenue Code.

(2) Any person that is the transferee of diesel fuel for use in motor vehicles which contains visible evidence of the dye solvent red 164, shall retain the documents required under paragraph (c)(1) of this section for a period of five years from the date of transfer of such fuel and shall provide such documents to the Administrator or the Administrator’s representative upon request.

(d) Liability. Liability for violations of paragraph (a)(1) of this section shall be determined according to the provisions of § 80.30. Any person that violates paragraph (a)(2) or (c) of this section shall be liable for penalties in accordance with paragraph (e) of this section.

(e) Penalties. Penalties for violations of paragraph (a) or (c) of this section shall be determined according to the provisions of § 80.30.

standard by fuel switching, blending, mislabeling, or any other means; and

(3) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(e) Violations at branded retail outlets or wholesale purchaser-consumer facilities. Where a violation of a diesel fuel standard set forth in §80.29 is detected at a retail outlet or at a wholesale purchaser-consumer facility displaying the corporate, trade, or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor and/or reseller (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(4) The refiner whose corporate, trade, or brand name, or that of any of its marketing subsidiaries, is displayed at the retail outlet or wholesale purchaser-consumer facility, except as provided in paragraph (g)(4) of this section.

(f) Violations at unbranded retail outlets or wholesale purchaser-consumer facilities. Where a violation of a diesel fuel standard set forth in §80.29 is detected at a retail outlet or at a wholesale purchaser-consumer facility not displaying the corporate, trade, or brand name of a refiner or any of its marketing subsidiaries, the following parties shall be deemed in violation:

(1) The retailer or wholesale purchaser-consumer, except as provided in paragraph (g)(5) of this section;

(2) The distributor (if any), except as provided in paragraph (g)(3) of this section;

(3) The carrier (if any), if the carrier caused the diesel fuel to violate the standard by fuel switching, blending, mislabeling, or any other means; and

(4) The refiner or importer at whose refinery or import facility the diesel fuel was produced or imported, except as provided in paragraph (g)(2) of this section.

(g) Defenses. (1) In any case in which a carrier would be in violation under paragraph (b)(1) of this section, the carrier shall not be deemed in violation if he can demonstrate:

(1) Evidence of an oversight program conducted by the carrier, for monitoring the diesel fuel stored or transported by that carrier, such as periodic sampling and testing of the cetane index and sulfur percentage of incoming diesel fuel. Such an oversight program need not include periodic sampling and testing of diesel fuel in a tank truck operated by a common carrier, but in lieu of such tank truck sampling and testing the common carrier shall demonstrate evidence of an oversight program for monitoring compliance with the diesel fuel requirements of §80.29 relating to the transport or storage of diesel fuel by tank truck, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records normally received in the ordinary course of business concerning diesel fuel quality and delivery; and

(ii) That the violation was not caused by the carrier or his employee or agent.

(2) In any case in which a refiner or importer would be in violation under paragraphs (b)(2), (d)(3), or (f)(4) of this section, the refiner or importer shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Test results, performed in accordance with the applicable sampling and testing methodologies set forth in §§80.2(w), 80.2(z), 80.2(bb), and 80.580, which evidence that the diesel fuel determined to be in violation was in compliance with the diesel fuel standards of §80.29(a) when it was delivered to the next party in the distribution system;

(3) In any case in which a distributor or reseller would be in violation under paragraphs (c)(1), (d)(1), (e)(2) or (f)(2) of this section, the distributor or reseller shall not be deemed in violation if he can demonstrate:

(i) That the violation was not caused by him or his employee or agent; and

(ii) Evidence of an oversight program conducted by the distributor or reseller, such as periodic sampling and
testing of diesel fuel, for monitoring
the sulfur percentage and cetane index
of the diesel fuel that the distributor
or reseller sells, supplies, offers for sale
or supply, or transports.

(4) In any case in which a refiner
would be in violation under paragraphs
(c)(3) or (e)(4) of this section, the re-
finer shall not be deemed in violation if
he can demonstrate all of the fol-
lowing:

(i) Test results, performed in accord-
ance with the applicable sampling and
testing methodologies set forth in
§§ 80.2(w), 80.2(z), 80.2(bb), and 80.580,
which evidence that the diesel fuel de-
termined to be in violation was in com-
pliance with the diesel fuel standards
of §80.29(a) when it was delivered to the
next party in the distribution system;

(ii) That the violation was not caused
by him or his employee or agent; and

(iii) That the violation:

(A) Was caused by an act in violation
of law (other than the Act or this part),
or an act of sabotage or vandalism,
whether or not such acts are violations
of law in the jurisdiction where the
violation of the requirements of this
part occurred, or

(B) Was caused by the action of a re-
seller or a retailer supplied by such re-
seller, in violation of a contractual un-
dertaking imposed by the refiner on
such reseller designed to prevent such
action, and despite reasonable efforts
by the refiner (such as periodic sam-
ping and testing) to insure compliance
with such contractual obligation, or

(C) Was caused by the action of a re-
tailer who is supplied directly by the
refiner (and not by a reseller), in viola-
tion of a contractual undertaking im-
posed by the refiner on such retailer
designed to prevent such action, and
despite reasonable efforts by the re-
finer (such as periodic sampling and
testing) to insure compliance with such
contractual obligation, or

(D) Was caused by the action of a dis-
tributor subject to a contract with the
refiner for transportation of diesel fuel
from a terminal to a distributor, re-
tailer or wholesale purchaser-con-
sumer, in violation of a contractual un-
dertaking imposed by the refiner on
such distributor designed to prevent
such action, and despite reasonable ef-
forts by the refiner (such as periodic
sampling and testing) to ensure com-
pliance with such contractual obliga-
tion, or

(E) Was caused by a carrier or other
distributor not subject to a contract
with the refiner but engaged by him for
transportation of diesel fuel from a ter-

tinal to a distributor, retailer or
wholesale purchaser-consumer, despite
reasonable efforts by the refiner (such
as specification or inspection of equip-
ment) to prevent such action, or

(F) Occurred at a wholesale pur-
chaser-consumer facility: Provided,
however, That if such wholesale pur-
chaser-consumer was supplied by a re-
seller, the refiner must demonstrate
that the violation could not have been
prevented by such reseller's compli-
ance with a contractual undertaking
imposed by the refiner on such reseller
as provided in paragraph (g)(4)(iii)(B) of
this section.

(iv) In paragraphs (g)(4)(iii) (A)
through (E) of this section, the term
was caused means that the refiner must
demonstrate by reasonably specific
showings, by direct or circumstantial
evidence, that the violation was caused
or must have been caused by another.

(5) In any case in which a retailer or
wholesale purchaser-consumer would
be in violation under paragraphs (e)(1)
or (f)(1) of this section, the retailer or
wholesale purchaser-consumer shall
not be deemed in violation if he can
demonstrate that the violation was not
caused by him or his employee or
agent.

(6) In paragraphs (g)(1)(iii), (g)(2)(i),
(g)(3)(i), (g)(4)(ii) and (g)(5) of this
section, the respective party must dem-
onstrate by reasonably specific
showings, by direct or circumstantial
evidence, that it or its employee or
agent did not cause the violation.

(7) In the case of any distributor or
reseller that would be in violation
under paragraph (e)(2) or (f)(2) of this
section or any wholesale purchaser-
consumer or retailer that would be in
violation under paragraph (e)(1) or
(f)(1) of this section for diesel fuel for
use in motor vehicles which contains
visible evidence of the dye solvent red
164, the distributor or reseller or
wholesale purchaser-consumer or re-
tailer shall not be deemed in violation
if he can:
§ 80.32 Controls applicable to liquefied petroleum gas retailers and wholesale purchaser-consumers.

After January 1, 1998 every retailer and wholesale purchaser-consumer handling over 13,660 gallons of liquefied petroleum gas per month shall equip each pump from which liquefied petroleum gas is introduced into motor vehicles with a nozzle that has no greater than 2.0 cm³ dead space from which liquefied petroleum gas will be released upon nozzle disconnect from the vehicle, as measured from the nozzle face which seals against the vehicle receptacle “O” ring, and as determined by calculation of the geometric shape of the nozzle. After January 1, 2000 this requirement applies to every liquefied petroleum gas retailer and wholesale purchaser-consumer. Any dispensing pump shown to be dedicated to heavy-duty vehicles is exempt from this requirement.

Subpart C—Oxygenated Gasoline

§ 80.35 Labeling of retail gasoline pumps; oxygenated gasoline.

(a) For oxygenated gasoline programs with a minimum oxygen content per gallon or minimum oxygen content requirement in conjunction with a credit program, the following shall apply:

(1) Each gasoline pump stand from which oxygenated gasoline is dispensed at a retail outlet in the control area shall be affixed with a legible and conspicuous label which contains the following statement:

The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles.

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