

§ 80.29

40 CFR Ch. I (7-1-13 Edition)

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 any case in which an ethanol blender would be in violation under paragraphs (b)(3), (c)(4), (d)(4), (e)(5) or (f)(4) of this section, the ethanol blender 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 ethanol blender, such as periodic sampling and testing of gasoline, for monitoring the volatility of gasoline that the ethanol blender sells, supplies, offers for sale or supply or transports; and

(iii) That the gasoline determined to be in violation contained no more than 10% ethanol (by volume) when it was delivered to the next party in the distribution system.

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

(8) In addition to the defenses provided in paragraphs (g)(1) through (g)(6) of this section, in any case in which an ethanol blender, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer would be in violation under paragraphs (b), (c), (d), (e) or (f), of this section, as a result of gasoline which contains between 9 and 10 percent ethanol (by volume) but exceeds the applicable standard by more than one pound per square inch (1.0 psi), the ethanol blender, distributor, reseller, carrier, retailer or wholesale purchaser-consumer shall not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which

the gasoline was received or other evidence acceptable to the Administrator, that:

(i) The gasoline portion of the blend complies with the Reid vapor pressure limitations of §80.27(a); and

(ii) The ethanol portion of the blend does not exceed 10 percent (by volume); and

(iii) No additional alcohol or other additive has been added to increase the Reid vapor pressure of the ethanol portion of the blend.

In the case of a violation alleged against an ethanol blender, distributor, reseller, or carrier, if the demonstration required by paragraphs (g)(8)(i), (ii), and (iii) of this section is made by a certification, it must be supported by evidence that the criteria in paragraphs (g)(8)(i), (ii), and (iii) of this section have been met, such as an oversight program conducted by or on behalf of the ethanol blender, distributor, reseller or carrier alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification shall be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or wholesale purchaser-consumer facility, such certification shall be deemed an adequate defense for the retailer or wholesale purchaser-consumer, provided that the retailer or wholesale purchaser-consumer is able to show certificates for all of the gasoline contained in the storage tank found in violation, and, provided that the retailer or wholesale purchaser-consumer has no reasonable basis to believe that the facts stated in the certifications are inaccurate.

[54 FR 11885, Mar. 22, 1989; 54 FR 27017, June 27, 1989, as amended at 56 FR 64711, Dec. 12, 1991; 58 FR 14484, Mar. 17, 1993; 62 FR 68205, Dec. 31, 1997; 67 FR 8736, Feb. 26, 2002]

§ 80.29 Controls and prohibitions on diesel fuel quality.

(a) *Prohibited activities.* Beginning October 1, 1993 and continuing until the

implementation dates for subpart I of part 80 as specified in § 80.500, except as provided in 40 CFR 69.51, no person, including but not limited to, refiners, importers, distributors, resellers, carriers, retailers or wholesale purchaser-consumers, shall manufacture, introduce into commerce, sell, offer for sale, supply, store, dispense, offer for supply or transport any diesel fuel for use in motor vehicles, unless the diesel fuel:

(1) Has a sulfur percentage, by weight, no greater than 0.05 percent;

(2)(i) Has a cetane index of at least 40; or

(ii) Has a maximum aromatic content of 35 volume percent; and

(3) Is free of visible evidence of the dye solvent red 164; unless it is used in a manner that is tax-exempt as defined under section 4082 of the Internal Revenue Code (26 U.S.C. 4082).

(b) *Determination of compliance.* (1) Any diesel fuel which does not show visible evidence of being dyed with dye solvent red 164 (which has a characteristic red color in diesel fuel) shall be considered to be available for use in diesel motor vehicles and motor vehicle engines, and shall be subject to the prohibitions of paragraph (a) of this section.

(2) Compliance with the sulfur, cetane, and aromatics standards in paragraph (a) of this section shall be determined based on the level of the applicable component or parameter, using the sampling methodologies specified in § 80.330(b), as applicable, and the appropriate testing methodologies specified in § 80.580(a) for sulfur, § 80.2(w) for cetane index, and § 80.2(z) for aromatic content. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the level of the applicable component or parameter in the diesel fuel, if the evidence or information is 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 transferor or 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 § 80.5.

[59 FR 35858, July 14, 1994, as amended at 63 FR 49465, Sept. 16, 1998; 66 FR 5135, Jan. 18, 2001]

§ 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