

§ 80.1661

(g) *Denaturant violation.* Cause or contribute to the introduction into commerce of an ethanol denaturant designated as suitable for the production manufacture of denatured fuel ethanol meeting federal quality requirements which does not comply with the requirements of § 80.1611.

(h) *Credit violation.* Generate, transfer, or use invalid credits or improperly transfer or use credits.

(i) *Export violation.* Distribute or dispense gasoline intended for export (pursuant to § 80.1603(b)(3)) for use in the United States.

(j) *Failure to meet a requirement.* Fail to meet a requirement that applies to that person under this subpart.

§ 80.1661 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the sulfur standards of this subpart O shall be determined based on the sulfur level, measured or otherwise determined as applicable using the methodologies specified in §§ 80.47, 80.1611, and 80.1630. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline, ethanol denaturant, or oxygenate if the evidence or information is relevant to whether the sulfur level would have been in compliance with the standards if the appropriate sampling and testing methodology or other sulfur determination methodology as applicable 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 those specified in §§ 80.47 and 80.1630, business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the sulfur standards, and determinations of liability for any violation of this subpart, 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.

40 CFR Ch. I (7–1–14 Edition)

§ 80.1662 Liability for violations.

The following persons are liable for violations under this subpart:

(a) *Persons liable for violations of prohibited acts.* (1) *Averaging violation.* Any refiner or importer who violates § 80.1660(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, oxygenate blender, ethanol denaturant producer, or ethanol denaturant importer who causes another party to violate § 80.1660(a), is liable for a violation of § 80.1660(c).

(3) *Cap standard violation.* Any refiner, gasoline importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, oxygenate producer, oxygenate importer, oxygenate blender, ethanol denaturant producer, ethanol denaturant importer, additive manufacturer, or additive blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.1660(b) occurred, is deemed in violation of § 80.1660(b).

(4) *Causing a cap standard violation.* Any refiner, gasoline importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, oxygenate producer, oxygenate importer, oxygenate blender, ethanol denaturant producer, ethanol denaturant importer, additive manufacturer, or additive blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline, oxygenate, or ethanol denaturant that violates § 80.1660(b), is deemed in violation of § 80.1660(c).

(5) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.1660(b) occurred, is deemed in violation of § 80.1660(b).

(6) *Causing violating gasoline to be in the distribution system.* Any refiner, gasoline importer, distributor, reseller, carrier, oxygenate producer, oxygenate importer, oxygenate blender, ethanol denaturant producer, ethanol denaturant importer, additive manufacturer, or additive blender who owned,

leased, operated, controlled or supervised a facility from which gasoline, oxygenate, or ethanol denaturant was released into the distribution system which does not comply with an applicable sulfur cap standard or a sulfur averaging standard is deemed in violation of § 80.1660(d).

(7) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(2), (a)(3), (a)(4), or (a)(6) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(8) *Oxygenate blender violation.* Any oxygenate blender who violates § 80.1660(e) is liable for the violation.

(9) *Additive manufacturer violation.* Any additive manufacturer who violates § 80.1660(g) is deemed liable for the violation.

(10) *Additive blender violation.* Any additive blender who violates § 80.1660(f) is deemed liable for the violation.

(11) *Credit violation.* Any refiner or importer who violates § 80.1660(h) is liable for the violation.

(12) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(13) *Joint venture and joint owner liability.* Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or facility owned by the joint owners, or is committed by the joint venture operation or any of the joint owners of the facility.

(b) *Persons liable for failure to meet other provisions of this subpart.* Any person who—

(1) Fails to comply with a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Causes another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section is liable for causing a violation of that provision.

§ 80.1663 Defenses for a violation of a prohibited act.

(a) Any person deemed liable for a violation of a prohibition under § 80.1662(a)(3) through (10), will not be deemed in violation if the person demonstrates all the following:

(1) The violation was not caused by the person or the person's employee or agent.

(2) In cases where product transfer document requirements under this subpart apply, the product transfer documents account for the fuel found to be in violation and indicate that the violating product was in compliance with the applicable requirements while in that person's control; and

(3) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct sampling and testing of gasoline as part of their quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraphs (a)(1) through (3) of this section, that the violation was caused by any of the following:

(1) An act in violation of law (other than the Clean Air Act or this part 80), or an act of sabotage or vandalism.

(2) The action of any refiner, gasoline importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation.

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of gasoline,