

§ 80.30

40 CFR Ch. I (7-1-03 Edition)

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 standard set forth in § 80.29 is detected at a carrier's facility, whether in a

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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 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:

(i) 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 refiner shall not be deemed in violation if

he can demonstrate all of the following:

(i) 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;

(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 reseller or a retailer supplied by such reseller, in violation of a contractual undertaking imposed by the refiner on such reseller designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to insure compliance with such contractual obligation, or

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

(D) Was caused by the action of a distributor subject to a contract with the refiner for transportation of diesel fuel from a terminal to a distributor, retailer or wholesale purchaser-consumer, in violation of a contractual undertaking imposed by the refiner on such distributor designed to prevent such action, and despite reasonable efforts by the refiner (such as periodic sampling and testing) to ensure compliance with such contractual obligation, 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 terminal to a distributor, retailer or wholesale purchaser-consumer, despite

reasonable efforts by the refiner (such as specification or inspection of equipment) to prevent such action, or

(F) Occurred at a wholesale purchaser-consumer facility: *Provided, however,* That if such wholesale purchaser-consumer was supplied by a reseller, the refiner must demonstrate that the violation could not have been prevented by such reseller's compliance 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 demonstrate 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 retailer shall not be deemed in violation if he can:

(i) Demonstrate that the violation was not caused by him or his employee or agent,

(ii) Demonstrate that the fuel has been supplied, offered for supply, transported or available for tax-exempt use as defined under section 4082 of the Internal Revenue Code, and

(iii) Provide evidence from the supplier in the form of documentation that the fuel met the applicable standards under paragraph (a)(1) of this section for sulfur and cetane index or aromatics content for use in motor vehicles.

(h) *Detection of violations.* In paragraphs (a) through (f) of this section, the term "is detected at" means that the violation existed at the facility in question, and the existence of the violation at that facility may be established through evidence obtained or created at that facility, at any other location, and by any party.

[55 FR 34138, Aug. 21, 1990, as amended at 59 FR 35859, July 14, 1994; 62 FR 68205, Dec. 31, 1997; 66 FR 5135, Jan. 18, 2001]

§ 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.

[59 FR 48490, Sept. 21, 1994]

§ 80.33 Controls applicable to natural gas retailers and wholesale purchaser-consumers.

(a) After January 1, 1998 every retailer and wholesale purchaser-consumer handling over 1,215,000 standard cubic feet of natural gas per month shall equip each pump from which natural gas is introduced into natural gas motor vehicles with a nozzle and hose configuration which vents no more than 1.2 grams of natural gas to the atmosphere per refueling of a vehicle