

§ 80.169

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person shall detergent-additize gasoline, unless such gasoline is additized in conformity with the requirements of § 80.161. No person shall cause the presence of any gasoline in the gasoline distribution system unless such gasoline is additized in conformity with the requirements of § 80.161.

(2) Gasoline has been additized in conformity with the requirements of § 80.161 when the detergent component satisfies the requirements of § 80.161 and when:

(i) The gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent certified in accordance with this subpart, and in accordance with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d); or

(ii) The gasoline is composed of two or more commingled gasolines and each component gasoline has been additized in conformity with the detergent composition and purpose-in-use specifications of a detergent certified in accordance with this subpart, and in accordance with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d); or

(iii) The gasoline is composed of a gasoline commingled with a post-refinery component (PRC), and both of these components have been additized in conformity with the detergent composition and use specifications of a detergent certified in accordance with this subpart, and in accordance with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d).

(b) No person shall blend detergent into gasoline or PRC unless such person complies with the volumetric additive reconciliation requirements of § 80.170.

(c) No person shall sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline, detergent, or detergent-additized PRC, unless the product transfer document for the gasoline, detergent or detergent-additized PRC complies with the requirements of § 80.171.

(d) No person shall refine, import, manufacture, sell, offer for sale, dispense, supply, offer for supply, store, transport, or cause the transportation of any detergent that is to be used as a component of detergent-additized gasoline or detergent-additized PRC unless such detergent conforms with the composition specifications of a detergent certified in accordance with this subpart and the detergent otherwise complies with the requirements of § 80.161. No person shall cause the presence of any detergent in the detergent, PRC, or gasoline distribution systems unless such detergent complies with the requirements of § 80.161.

(e)(1) No person shall sell, offer for sale, dispense, supply, offer for supply, transport, or cause the transportation of detergent-additized PRC unless the PRC has been additized in conformity with the requirements of § 80.161. No person shall cause the presence in the PRC or gasoline distribution systems of any detergent-additized PRC that fails to conform to the requirements of § 80.161.

(2) PRC has been additized in conformity with the requirements of § 80.161 when the detergent component satisfies the requirements of § 80.161 and when:

(i) The PRC has been additized in accordance with the detergent composition and use specifications of a detergent certified in accordance with this subpart and in conformity with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d), or

(ii) The PRC is composed of two or more commingled PRCs, and each component has been additized in accordance with the detergent composition and use specifications of a detergent certified in accordance with this subpart, and in conformity with at least the minimum concentration specifications of that detergent as certified or as otherwise provided under § 80.161(d).

[61 FR 35373, July 5, 1996]

§ 80.169 Liability for violations of the detergent certification program controls and prohibitions.

(a) *Persons Liable*—(1) *Gasoline non-conformity.* Where gasoline contained in

any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, is found in violation of any of the prohibitions specified in §80.168(a), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, or detergent blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, detergent additized, transported, or caused the transportation of the detergent-additized gasoline (or the base gasoline component, the detergent component, or the detergent-additized post-refinery component of the gasoline) that is in violation, and each such party that caused the gasoline that is in violation to be present in the gasoline distribution system; and

(iii) Each gasoline carrier who dispensed, supplied, stored, or transported any gasoline in the storage tank containing gasoline found to be in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any PRC or gasoline in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(2) *Post-refinery component non-conformity.* Where detergent-additized PRC contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, dis-

tributor, or blender, is found in violation of the prohibitions specified in §80.168(e), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale-purchaser consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, detergent additized, transported, or caused the transportation of the detergent-additized PRC (or the detergent component of the PRC) that is in violation, and each such party that caused the PRC that is in violation to be present in the PRC or gasoline distribution systems; and

(iii) Each carrier who dispensed, supplied, stored, or transported any detergent-additized PRC in the storage tank containing PRC that is in violation, and each detergent carrier who dispensed, supplied, stored, or transported the detergent component of any detergent-additized PRC which is in the storage tank containing detergent-additized PRC found to be in violation, provided that EPA demonstrates by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(3) *Detergent non-conformity.* Where the detergent (prior to additization) contained in any storage tank or container found at any facility owned, leased, operated, controlled or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, is found in violation of the prohibitions specified in §80.168(d), the following persons shall be deemed in violation:

(i) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer,

carrier, distributor, or blender, who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found;

(ii) Each gasoline refiner, importer, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, distributor, or blender, who sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent that is in violation, and each such party that caused the detergent that is in violation to be present in the detergent, gasoline, or PRC distribution systems; and

(iii) Each gasoline or detergent carrier who dispensed, supplied, stored, or transported any detergent which is in the storage tank or container containing detergent found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the gasoline or detergent carrier caused the violation.

(4) *Volumetric additive reconciliation.* Where a violation of the volumetric additive reconciliation requirements established by § 80.168(b) has occurred, the following persons shall be deemed in violation:

(i) Each detergent blender who owns, leases, operates, controls or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation has occurred; and

(ii) Each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, or oxygenate blender, and each detergent manufacturer, carrier, distributor, or blender, who refined, imported, manufactured, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of the detergent-additized gasoline, the base gasoline component, the detergent component, or the detergent-additized PRC of the gasoline that is in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that such person caused the violation.

(5) *Product transfer document.* Where a violation of § 80.168(c) is found at a fa-

cility owned, leased, operated, controlled, or supervised by any gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, the following persons shall be deemed in violation: each gasoline refiner, importer, carrier, distributor, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent manufacturer, carrier, distributor, or blender, who owns, leases, operates, control or supervises the facility (including, but not limited to, a truck or individual storage tank) where the violation is found.

(b) *Branded Refiner Vicarious Liability.* Where any violation of the prohibitions specified in § 80.168 has occurred, with the exception of violations of § 80.168(c), a refiner will also be deemed liable for violations occurring at a facility operating under such refiner's corporate, trade, or brand name or that of any of its marketing subsidiaries. For purposes of this section, the word facility includes, but is not limited to, a truck or individual storage tank.

(c) *Defenses.* (1) In any case in which a gasoline refiner, importer, distributor, carrier, reseller, retailer, wholesale purchaser-consumer, oxygenate blender, detergent distributor, carrier, or blender, is in violation of any of the prohibitions of § 80.168, pursuant to paragraph (a) or (b) of this section as applicable, the regulated party shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent (unless otherwise provided in this paragraph (c));

(ii) That product transfer documents account for the gasoline, detergent, or detergent-additized PRC in violation and indicate that the gasoline, detergent, or detergent-additized PRC satisfied relevant requirements when it left the party's control; and

(iii) That the party has fulfilled the requirements of paragraphs (c) (2) or (3) of this section, as applicable.

(2) *Branded refiner.* Where a branded refiner is in violation of any of the prohibitions of § 80.168 as a result of violations occurring at a facility (including,

but not limited to, a truck or individual storage tank) which is operating under the corporate, trade or brand name of a refiner or that of any of its marketing subsidiaries, the refiner shall be deemed not in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, that the violation was caused by:

(i) An act in violation of law (other than these regulations), or an act of sabotage or vandalism, whether or not such acts are violations of law in the jurisdiction where the violation of the prohibitions of § 80.168 occurred; or

(ii) The action of any gasoline refiner, importer, reseller, distributor, oxygenate blender, detergent manufacturer, distributor, blender, or retailer or wholesale purchaser-consumer supplied by any of these persons, in violation of a contractual undertaking imposed by the refiner designed to prevent such action, and despite the implementation of an oversight program, including, but not limited to, periodic review of product transfer documents by the refiner to ensure compliance with such contractual obligation; or

(iii) The action of any gasoline or detergent carrier, or other gasoline or detergent distributor not subject to a contract with the refiner but engaged by the refiner for transportation of gasoline, PRC, or detergent, to a gasoline or detergent distributor, oxygenate blender, detergent blender, gasoline retailer or wholesale purchaser consumer, despite specification or inspection of procedures or equipment by the refiner which are reasonably calculated to prevent such action.

(iv) In this paragraph (c)(2), to show that the violation "was caused" by any of the specified actions, the party must demonstrate by reasonably specific showings, by direct or circumstantial evidence, that the violation was caused or must have been caused by another.

(3) *Detergent blender.* In any case in which a detergent blender is liable for violating any of the prohibitions of § 80.168, the detergent blender shall not be deemed in violation if it can demonstrate, in addition to the defense requirements stated in paragraph (c)(1) of this section, the following:

(i) That it obtained or supplied, as appropriate, prior to the detergent blending, accurate written instructions from the detergent manufacturer or other party with knowledge of such instructions, specifying the appropriate LAC for the detergent, as specified in § 80.161(b)(1)(ii), together with any use restrictions which pertain to this LAC pursuant to the detergent's certification; and

(ii) That it has implemented a quality assurance program that includes, but is not limited to, a periodic review of its supporting product transfer and volume measurement documents to confirm the correctness of its product transfer and volumetric additive reconciliation documents created for all products it additized.

(4) *Detergent manufacturer.* (i) *Presumptive Liability Affirmative Defense.* Notwithstanding the provisions of paragraph (c)(1) of this section, in any case in which a detergent manufacturer is liable for violating any of the prohibitions of § 80.168, the detergent manufacturer shall be deemed not in violation if it can demonstrate each of the following:

(A) Product transfer documents which account for the detergent component of the product in violation and which indicate that such detergent satisfied all relevant requirements when it left the detergent manufacturer's control.

(B) Written blending instructions which, pursuant to § 80.161(c), were supplied by the detergent manufacturer to its customer who purchased or obtained from the manufacturer the detergent component of the product determined to be in violation. The written blending instructions must have been supplied by the manufacturer prior to the customer's use or sale of the detergent. The instructions must accurately specify both the appropriate LAC for the detergent, pursuant to § 80.161(b)(1)(ii), plus any use restrictions which may pertain to this LAC pursuant to the detergent's certification.

(C) If the detergent batch used in the noncomplying product was produced less than one year before the manufacturer was notified by EPA of the possible violation, then the manufacturer

must provide FTIR test results for the batch in question.

(1) The FTIR analysis may have been conducted on the subject detergent batch at the time it was manufactured, or may be conducted on a sample of that batch which the manufacturer retained for such purpose at the time the batch was manufactured.

(2) To establish that, when it left the manufacturer's control, the detergent component of the noncomplying product was in conformity with the chemical composition and concentration specifications reported pursuant to § 80.161(b), the FTIR test results for the detergent batch used in the noncomplying product must be consistent with the FTIR results submitted at the time of registration pursuant to § 80.162(d).

(D) If the detergent batch used in the noncomplying product was produced more than one year prior to the manufacturer's notification by EPA of the possible violation, then the manufacturer must provide either:

(1) FTIR test results for the batch in question as specified in the preceding paragraph (c)(4)(i)(C) of this § 80.169(c); or

(2) The following materials:

(i) Documentation for the batch in question, showing that its measured viscosity, density, and basic nitrogen content, or any other such physical parameter(s) which EPA may have approved for monitoring production quality control, were within the acceptable range of production values specified in the certification pursuant to § 80.162(e); and

(ii) If the detergent registration identifies polymeric component(s) of the detergent package as the product(s) of other chemical reactants, documentation that the reagents used to synthesize the detergent batch in question were the same as those specified in the registration and that they met the manufacturer's normal acceptance criteria reported pursuant to § 80.162(b)(1).

(iii) *Detergent manufacturer causation liability.* In any case in which a detergent manufacturer is liable for a violation of § 80.168, and the manufacturer establishes an affirmative defense to such liability pursuant to § 80.169(c)(4)(i), the detergent manufacturer will nonetheless be deemed liable

for the violation of § 80.168 if EPA can demonstrate, by reasonably specific showings by direct or circumstantial evidence, that the detergent manufacturer caused the violation.

(5) *Defense against liability where more than one party may be liable for VAR violations.* In any case in which a party is presumptively or vicariously liable for a violation of § 80.170, except for the VAR record requirements pursuant to § 80.170(g), such party shall not be deemed liable if it can establish the following:

(i) Prior to the violation it had entered into a written contract with another potentially liable detergent blender party ("the assuming party"), under which that other party assumed legal responsibility for fulfilling the VAR requirement that had been violated;

(ii) The contract included reasonable oversight provision to ensure that the assuming party fulfilled its VAR responsibilities (including, but not limited to, periodic review of VAR records) and the oversight provision was actually implemented by the party raising the defense;

(iii) The assuming party is fiscally sound and able to pay its penalty for the VAR violation; and

(iv) The employees or agents of the party raising the defense did not cause the violation.

(6) *Defense to liability for gasoline non-conformity violations caused solely by the addition of misadditized ethanol or other PRC to the gasoline.* In any case in which a party is presumptively or vicariously liable for a gasoline non-conformity violation of § 80.168(a) caused solely by another party's addition of misadditized ethanol or other PRC to the gasoline, the former party shall not be deemed liable for the violation, provided that it can establish that it has fulfilled the defense requirements of paragraphs (c)(1) (i) and (ii) of this section.

(7) *Detergent tank transitioning defenses.* The commingling of two detergents in the same detergent storage tank will not be deemed to violate or cause violations of any of the provisions of this subpart, provided the following conditions are met:

(i) The commingling must occur during a legitimate detergent transitioning event, *i.e.*, a shift from the use of one detergent to another through the delivery of the new detergent into the same tank that contains the original detergent; and

(ii) Any use restrictions applicable to the new detergent's certification also apply to the combined detergents; and

(iii) The commingling event must be documented, either on the VAR formula record or on attached supporting records; and

(iv) Notwithstanding any contrary provisions in §80.170, a VAR formula record must be created for the combined detergents. The VAR compliance period must begin no later than the time of the commingling event. However, at the blender's option, the compliance period may begin earlier, thus including use of the uncombined original detergent within the same period, provided that the 31-day limitation pursuant to §80.170(a)(6) is not exceeded; and

(v) The VAR formula record must also satisfy the requirements in one of the following paragraphs (c)(7)(v) (A) through (C) of this section, whichever applies to the commingling event. If neither paragraph (c)(7)(v) (A) nor (B) of this section initially applies, then the blender may drain and subsequently redeliver the original detergent into the tank in restricted amounts, in order to meet the conditions of paragraph (c)(7)(v) (A) or (B) of this section. Otherwise, the blender must comply with paragraph (c)(7)(v)(C) of this section.

(A) If both detergents have the same LAC, and the original detergent accounts for no more than 20 percent of the tank's total delivered volume after addition of the new detergent, then the VAR formula record is required to identify only the use of the new detergent.

(B) If the two detergents have different LACs and the original detergent accounts for 10 percent or less of the tank's total delivered volume after addition of the new detergent, then the VAR formula record is required to identify only the use of the new detergent, and must attain the LAC of the new detergent. If the original deter-

gent's LAC is greater than that of the new detergent, then the compliance period may begin earlier than the date of the commingling event (pursuant to paragraph (c)(7)(iv) of this section) only if the original detergent does not exceed 10 percent of the total detergent used during the compliance period.

(C) If neither of the preceding paragraphs (c)(7)(v) (A) or (B) of this section applies, then the VAR formula record must identify both of the commingled detergents, and must use and attain the higher LAC of the two detergents. Once the commingled detergent has been depleted by an amount equal to the volume of the original detergent in the tank at the time the new detergent was added, subsequent VAR formula records must identify and use the LAC of only the new detergent.

(8) *Transition from noncertified to certified detergent.* Notwithstanding the prohibitions in §§80.161(a)(3) and 80.168, after June 30, 1997, the addition to gasoline or PRC of a detergent which has not been certified pursuant to §80.161 shall not be deemed to violate or cause violations of provisions of this subpart, provided that all of the following conditions are met:

(i) The detergent was received by the detergent blender prior to July 1, 1997 and is used prior to January 1, 1998. Documentation which supports these dates must be maintained for at least five years and must be available for EPA's inspection upon request;

(ii) The detergent is added to gasoline or PRC only in combination with a certified detergent and, at any one time, accounts for no more than 10 percent of the detergent tank's delivered volume;

(iii) The total volume of detergent added to the gasoline or PRC is sufficient to attain the LAC of the certified detergent; and

(iv) Use restrictions associated with the certified detergent are adhered to.

(9) *Procedures for curing use restrictions.* In the case of a fuel product which has been additized with a detergent under the conditions of a use-restricted certification (pursuant to §80.163), the use restriction can be negated ("cured") by application of the procedures in this paragraph (c)(9). A party shall not be liable for violations

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of § 80.168(a) or (e) caused solely by the additization or subsequent use of gasoline or PRC in violation of such use restriction, provided that the following steps and conditions are applied before EPA has identified the nonconformity and prior to the sale or transfer of nonconforming product to the ultimate consumer:

(i) Additional detergent must be added in sufficient quantity to provide effective deposit control, taking into account both the amount of detergent previously added and the final anticipated volume and composition of the subject fuel product.

(ii) The additional detergent may be either the original detergent or a different detergent, so long as the additional detergent has been separately certified both for use with the subject fuel product and for use with the type of fuel product associated with the restriction which the party wishes to negate by the curing procedure. Detergents which have not been separately certified for both types of fuel products are not eligible to be used for this curing procedure.

(iii) If a fuel product has been detergent additized under the conditions of a use-restricted certification which would preclude the addition of an oxygenate or other PRC, then such oxygenate or other PRC may nevertheless be added to that fuel product under this curing procedure, provided that additional eligible detergent is added, in an amount which equals or exceeds the number of gallons (D_A) derived from the following equation:

$$\text{Additional Detergent Volume} = D_A = Vp(\text{LAC}_2 - \text{LAC}_1) + V(1 - p)\text{LAC}_2$$

where:

V = Final volume of fuel product (in gallons)
p = Fraction of final fuel product composed of the original (uncombined) fuel product

LAC₂ = Detergent's LAC certified for the final combined fuel product (in gallons of detergent per 1,000 gallons of fuel product)

LAC₁ = Detergent's LAC certified for the original (uncombined) fuel product (in gallons of detergent per 1,000 gallons of fuel product)

(iv) In other instances in which gasoline or PRC has been additized in violation of a detergent use restriction, and no additional fuel components are to be added, such use restriction can be

cured by the addition of eligible detergent in an amount which equals or exceeds the number of gallons (D_A) derived from the following equation, which is a simplified version of the previous equation:

$$\text{Additional Detergent Volume} = D_A = V(\text{LAC}_2 - \text{LAC}_1)$$

where:

V = Volume of fuel product (in gallons) to be cured of the use restriction

LAC₂ = Detergent's LAC certified for the fuel product without the use restriction (in gallons of detergent per 1,000 gallons of fuel product)

LAC₁ = Detergent's LAC certified for the fuel product with the use restriction to be cured (in gallons of detergent per 1,000 gallons of fuel product)

(v) In all such instances, a curing VAR must be created and maintained, which documents the use of the appropriate equation as specified above, and otherwise complies with the requirements of § 80.170(f)(6).

[61 FR 35373, July 5, 1996, as amended at 61 FR 58747, Nov. 18, 1996; 66 FR 55890, Nov. 5, 2001]

§ 80.170 Volumetric additive reconciliation (VAR), equipment calibration, and recordkeeping requirements.

This section contains requirements for automated detergent blending facilities and hand-blending detergent facilities. All gasoline and all PRC intended for use in gasoline must be additized unless otherwise noted in supporting VAR records, and must be accounted for in VAR records. The VAR reconciliation standard is attained under this section when the actual concentration of detergent used per VAR formula record equals or exceeds the applicable LAC certified for that detergent pursuant to § 80.161(b)(3)(ix) or, if appropriate, § 80.161(d). If a given detergent package has been certified under more than one certification option pursuant to § 80.163, then a separate VAR formula record must be created for gasoline or PRC additized on the basis of each certification and its respective LAC. In such cases, the amount of the detergent used under different certification options must be accurately and separately measured, either through the