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and requirements, including the requirements relating to the presence of marker solvent yellow 124.

(2) For those parties who, at a downstream location, blend diesel fuel additives subject to the requirements of § 80.521(b) into fuel trucks at a truck loading rack, the periodic sampling and testing program required under this paragraph (d) must ensure, by taking into account the greater risk of noncompliance created through use of a high sulfur additive, that the diesel fuel into which the additive was blended meets the applicable standards subsequent to the blending.

(3) On each occasion when diesel fuel or additive is found not in compliance with the applicable standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product.

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring).

(4) For any carrier who transports diesel fuel or additive in a tank truck, the quality assurance program required under this paragraph (d) need not include its own periodic sampling and testing of the diesel fuel or additive in the tank truck, but in lieu of such tank truck sampling and testing, the carrier shall demonstrate evidence of an oversight program for monitoring compliance with the requirements of this subpart relating to the transport or storage of such product by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard, product segregation and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning diesel fuel or additive quality and delivery.

### § 80.614 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.612 is subject to civil penalties as specified in section 205 of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b)(1) Any person liable under § 80.612(a)(1) for a violation of an applicable standard or requirement under § 80.520, or of causing another party to violate such standard or requirement, is subject to a separate day of violation for each and every day the non-complying motor vehicle diesel fuel re-

mains any place in the distribution system.

(2) Any person liable under § 80.612(a)(2) for causing motor vehicle diesel fuel to be in the distribution system which does not comply with an applicable standard or requirement of § 80.520, is subject to a separate day of violation for each and every day that the non-complying motor vehicle diesel fuel remains any place in the motor vehicle diesel fuel distribution system.

(3) Any person liable under § 80.612(a)(1) for blending into motor vehicle diesel fuel an additive violating the applicable sulfur standard pursuant to the requirements of § 80.521(a) or (b), as appropriate, or of causing another party to so blend or add such an additive, is subject to a separate day of violation for each and every day the motor vehicle diesel fuel into which the noncomplying additive was blended, remains any place in the fuel distribution system.

(4) For purposes of this paragraph (b), the length of time the motor vehicle diesel fuel in question remained in the motor vehicle diesel fuel distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying motor vehicle diesel fuel remained in the distribution system for fewer than or more than twenty-five days.

(c) Any person liable under § 80.612(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

EFFECTIVE DATE NOTE: At 69 FR 39205, June 29, 2004, § 80.614 was revised, effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

### § 80.614 What are the alternative defense requirements in lieu of § 80.613(a)(1)(vi) for static dissipater additives exceeding the 15 ppm sulfur standard but that contribute less than 0.05 ppm sulfur when added to MVNRLM diesel fuel?

Any person who blends a MVNRLM diesel fuel additive package into MVNRLM diesel fuel subject to the 15 ppm sulfur standards of § 80.510(b) or (c) or § 80.520(a) which contains a static dissipater additive that has a sulfur

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content greater than 15 ppm but whose contribution to the sulfur content of the MVNRLM diesel fuel is less than 0.05 ppm at its maximum recommended concentration, and which contains no other additives with a sulfur content greater than 15 ppm must establish all the following in order to use this section as an alternative to the defense element under § 80.613(a)(1)(vi):

(a)(1) The blender of the static dissipater additive package has a sulfur content test result for the MVNRLM diesel fuel prior to blending of the additive that indicates that the additive package, when added, will not cause the MVNRLM diesel fuel sulfur content to exceed 15 ppm sulfur.

(2) In cases where the storage tank that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, the blender of the static dissipater additive package must have sulfur test results on each batch of MVNRLM diesel fuel that was added to the storage tank during the current and previous VAR periods, which indicates that the additive package, when added to the component MVNRLM diesel fuel batch in the storage tank with the highest sulfur level would not cause that component batch to exceed 15 ppm sulfur.

(b) The volumetric additive reconciliation (VAR) standard is attained as determined under the provisions of this section. The VAR reconciliation standard is attained when the actual concentration of a static dissipater additive package used per the VAR formula record under paragraph (f) of this section is less than the concentration that would have caused any batch of MVNRLM diesel fuel to exceed a sulfur content of 15 ppm given the maximum sulfur test result on any MVNRLM diesel fuel batch described in paragraph (a) of this section that is additized with the static dissipater additive package during the VAR period.

(c) The product transfer document complies with the applicable sulfur information requirements of § 80.591.

(d) If more than one static dissipater additive package is used during a VAR period, then a separate VAR formula record must be created for MVNRLM diesel fuel additized for each of the static dissipater additive packages used. In such cases, the amount of the each static dissipater additive package used must be accurately and separately measured, either through the use of a separate storage tank, a separate meter, or some other measurement system that is able to accurately distinguish its use.

(e) Recorded volumes of MVNRLM diesel fuel and static dissipater additive package must be expressed to the nearest gallon (or smaller units), except that static dissipater additive package volumes of five gallons or less must be expressed to the nearest tenth of a gallon (or smaller units). However, if the

blender's equipment cannot accurately measure to the nearest tenth of a gallon, then such volumes must be rounded upward to the next higher gallon for purposes of determining compliance with this section.

(f) Each VAR formula record must also contain the following information:

(1) *Automated blending facilities.* In the case of an automated static dissipater additive package blending facility, for each VAR period, for each static dissipater additive package storage system, and each static dissipater additive package in that storage system, the following must be recorded:

(i)(A) The manufacturer and commercial identifying name of the static dissipater additive package being reconciled, the maximum recommended treatment level, the potential contribution to the sulfur content of the finished fuel that might result when the additive package is used at its maximum recommended treatment level, the intended treatment level, and the contribution to the sulfur content of the finished fuel that would result when the additive package is used at its intended treatment level. The intended treatment level is the treatment level that the additive injection equipment is set to.

(B) The maximum recommended treatment level and the intended treatment level must be expressed in terms of gallons of static dissipater additive package per thousand gallons of MVNRLM diesel fuel, and expressed to four significant figures. If the static dissipater additive package storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

(ii) The total volume of static dissipater additive package blended into MVNRLM diesel fuel, in accordance with one of the following methods, as applicable.

(A) For a facility which uses in-line meters to measure static dissipater additive package usage, the total volume of static dissipater additive package measured, together with supporting data which includes one of the following: the beginning and ending meter readings for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(B) For a facility which uses a gauge to measure the inventory of the static dissipater additive package storage tank, the total volume of static dissipater additive package shall be calculated from the following equation:

Static dissipater additive package Volume = (A) - (B) + (C) - (D)

Where:

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A = Initial static dissipater additive package inventory of the tank

B = Final static dissipater additive package inventory of the tank

C = Sum of any additions to static dissipater additive package inventory

D = Sum of any withdrawals from static dissipater additive package inventory for purposes other than the additization of MVNRLM diesel fuel.

(C) The value of each variable in the equation in paragraph (f)(1)(ii)(B) of this section must be separately recorded on the VAR formula record. In addition, a list of each static dissipater additive package addition included in variable C and a list of each static dissipater additive package withdrawal included in variable D must be provided, either on the formula record or as VAR supporting documentation.

(iii) The total volume of MVNRLM diesel fuel to which static dissipater additive package has been added, together with supporting data which includes one of the following: the beginning and ending meter measurements for each meter being measured, the metered batch volume measurements for each meter being measured, or other comparable metered measurements. The supporting data may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation.

(iv) The actual static dissipater additive package concentration, calculated as the total volume of static dissipater additive package added (pursuant to paragraph (f)(1)(ii) of this section), divided by the total volume of MVNRLM diesel fuel (pursuant to paragraph (f)(1)(iii) of this section). The concentration must be calculated and recorded to 4 significant figures.

(v) A list of each static dissipater additive package concentration rate set for the static dissipater additive package that is the subject of the VAR record, together with the date and description of each adjustment to any initially set concentration. The concentration adjustment information may be supplied on the VAR formula record or in the form of computer printouts or other comparable VAR supporting documentation. No concentration setting is permitted above the maximum recommended concentration supplied by the additive manufacturer, except as described in paragraph (f)(1)(vii) of this section.

(vi) The dates of the VAR period, which shall be no longer than thirty-one days. If the VAR period is contemporaneous with a calendar month, then specifying the month will fulfill this requirement; if not, then the beginning and ending dates and times of the VAR period must be listed. The times may be supplied on the VAR formula record or in supporting documentation. Any adjustment

to any static dissipater additive package concentration rate initially set in the VAR period shall terminate that VAR period and initiate a new VAR period, except as provided in paragraph (f)(1)(vii) of this section.

(vii) The concentration setting for a static dissipater additive package injector may be changed from the concentration initially set in the VAR period without terminating that VAR period, provided that:

(A) The purpose of the change is to correct a batch under-additization prior to the end of the VAR period and prior to the transfer of the batch to another party, or to correct an equipment malfunction where there has been no over-additization of the additive;

(B) The concentration is immediately returned after the correction to a concentration that fulfills the requirements of this paragraph (f);

(C) The blender creates and maintains documentation establishing the date and adjustments of the correction; and

(D) If the correction is initiated only to rectify an equipment malfunction, and the amount of static dissipater additive package used in this procedure is not added to MVNRLM diesel fuel within the compliance period, then this amount is subtracted from the static dissipater additive package volume listed on the VAR formula record. In such a case, the addition of this amount of static dissipater additive must be reflected in the following VAR period.

(viii) The measured sulfur level for each batch of MVNRLM diesel fuel to which a static dissipater additive package is added during each VAR period. In cases where the storage tank that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, a measured sulfur level on each batch added to the storage tank during the current and previous VAR periods must be recorded.

(2) *Non-automated facilities.* In the case of a facility in which hand blending or any other non-automated method is used to blend static dissipater additive packages, for each static dissipater additive package and for each batch of MVNRLM diesel fuel to which the static dissipater additive package is being added, the following shall be recorded:

(i) The manufacturer and commercial identifying name of the static dissipater additive package being reconciled, the maximum recommended treatment level, the potential contribution to the sulfur content of the finished fuel that might result when the fuel is used at its maximum recommended treatment level, the intended treatment level, and the contribution to the sulfur content of the finished fuel that would result when the additive package is used at its intended treatment level.

(A) The maximum recommended treatment level and the intended treatment level must

be expressed in terms of gallons of static dissipater additive package per thousand gallons of MVNRLM diesel fuel, and expressed to four significant figures.

(B) If the static dissipater additive package storage system which is the subject of the VAR formula record is a proprietary system under the control of a customer, this fact must be indicated on the record.

(i) The date of the additization that is the subject of the VAR formula record.

(iii) The volume of added static dissipater additive package.

(iv) The volume of the MVNRLM diesel fuel to which the static dissipater additive package has been added.

(v) The brand (if known) of MVNRLM diesel fuel.

(vi) The actual static dissipater additive package concentration, calculated as the volume of added static dissipater additive package (pursuant to paragraph (f)(1)(ii)(B) of this section), divided by the volume of MVNRLM diesel fuel (pursuant to paragraph (f)(1)(iii) of this section). The concentration must be calculated and recorded to four significant figures.

(vii) The measured sulfur level for each batch of MVNRLM diesel fuel to which a static dissipater additive package is added during each VAR period. In cases where the storage tanks that contains MVNRLM diesel fuel prior to additization contains multiple fuel batches, a measured sulfur level on each batch added to the storage tank during the current and previous VAR periods must be recorded.

(3) *VAR formula records.* Every VAR formula record created pursuant to paragraphs (f)(1) and (f)(2) of this section shall contain the following:

(i) The signature of the creator of the VAR record;

(ii) The date of the creation of the VAR record; and

(iii) A certification of correctness by the creator of the VAR record.

(4) *Electronically-generated VAR formula and supporting records.* (i) Electronically-generated records are acceptable for VAR formula records and supporting documentation (including PTDs), provided that they are complete, accessible, and easily readable. VAR formula records must also be stored with access and audit security, which must restrict to a limited number of specified people those who have the ability to alter or delete the records. In addition, parties maintaining records electronically must make available to EPA the hardware and software necessary to review the records.

(ii) Electronically-generated VAR formula records may use an electronic user identification code to satisfy the signature requirements of paragraph (f)(3)(i) of this section, provided that:

(A) The use of the identification is limited to the record creator; and

(B) A paper record is maintained, which is signed and dated by the VAR formula record creator, acknowledging that the use of that particular user ID on a VAR formula record is equivalent to his/her signature on the document.

(5) *Calibration requirements for automated blending facilities.* Automated static dissipater additive package blenders must calibrate their static dissipater additive package equipment at least once in each calendar half year, with the acceptable calibrations being no less than one hundred twenty days apart, except that calibrations may be closer in time so long as at least two calibrations meet the requirements to be in separate halves of the calendar year and no less than 120 days apart. Equipment recalibration is also required each time the static dissipater additive package is changed, unless written documentation indicates that the new static dissipater additive package has the same viscosity as the previous static dissipater additive package. Static dissipater package change calibrations may be used to satisfy the semiannual requirement provided that the calibrations occur in the appropriate half calendar year and are no less than one hundred twenty days apart.

(6) *Additional VAR documentation.* The following VAR supporting documentation must also be created and maintained:

(i) For all automated static dissipater additive package blending facilities, documentation reflecting performance of the calibrations required by paragraph (f)(5) of this section, and any associated adjustments of the automated static dissipater additive package injection equipment;

(ii) For all static dissipater additive package blending facilities, product transfer documents for all static dissipater additive packages, and static dissipater-additized MVNRLM diesel fuel transferred into or out of the facility;

(iii) For all automated static dissipater additive package blending facilities, documentation establishing the brands (if known) of the MVNRLM diesel fuel which is the subject of the VAR formula record; and

(iv) For all hand blending static dissipater additive package blenders, the documentation, if in the party's possession, supporting the volumes of MVNRLM diesel fuel and static dissipater additive package reported on the VAR formula record.

(7) *Document retention and availability.* All static dissipater additive package blenders shall retain the documents required under this section for a period of five years from the date the VAR formula records and supporting documentation are created, and shall deliver them upon request to the EPA Administrator or the Administrator's authorized representative.

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(i) Except as provided in paragraph (f)(7)(iii) of this section, automated static dissipater additive package blender facilities and hand-blender facilities which are terminals, which physically blend static dissipater additive packages into MVNRLM diesel fuel, must make immediately available to EPA, upon request, the preceding twelve months of VAR formula records plus the preceding two months of VAR supporting documentation.

(ii) Except as provided in paragraph (f)(7)(iii) of this section, other hand-blending static dissipater additive package facilities which physically blend static dissipater additive package into MVNRLM diesel fuel must make immediately available to EPA, upon request, the preceding two months of VAR formula records and VAR supporting documentation.

(iii) Facilities which have centrally maintained records at other locations, or have customers who maintain their own records at other locations for their proprietary static dissipater additive package injection systems, and which can document this fact to the Agency, may have until the start of the next business day after the EPA request to supply VAR supporting documentation, or longer if approved by the Agency.

(iv) In this paragraph (f)(7), the term “immediately available” means that the records must be provided, electronically or otherwise, within approximately one hour of EPA’s request, or within a longer time frame as approved by EPA.

### § 80.615 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.612 is subject to civil penalties as specified in section 205 of the Clean Air Act (42 U.S.C. 7524) for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b)(1) Any person liable under § 80.612(a)(1) for a violation of an applicable standard or requirement under this Subpart I or for causing another party to violate such standard or requirement, is subject to a separate day of violation for each and every day the non-complying diesel fuel remains any place in the distribution system.

(2) Any person liable under § 80.612(a)(2) for causing motor vehicle diesel fuel, NRLM diesel fuel, heating oil, or other distillate fuel to be in the distribution system which does not comply with an applicable standard or requirement of this Subpart I is subject to a separate day of violation for each

and every day that the non-complying diesel fuel remains any place in the diesel fuel distribution system.

(3) Any person liable under § 80.612(a)(1) for blending into diesel fuel an additive violating the applicable sulfur standard pursuant to the requirements of § 80.521(a) or (b), as applicable, or of causing another party to so blend such an additive, is subject to a separate day of violation for each and every day the motor vehicle diesel fuel or NRLM diesel fuel into which the noncomplying additive was blended, remains any place in the fuel distribution system.

(4) For purposes of this paragraph (b) of this section, the length of time the motor vehicle diesel fuel, NRLM diesel fuel, heating oil or other distillate fuel in question remained in the diesel fuel distribution system is deemed to be 25 days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying motor vehicle, NR or NRLM diesel fuel, heating oil or distillate fuel remained in the distribution system for fewer than or more than 25 days.

(c) Any person liable under § 80.612(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

[69 FR 39208, June 29, 2004]

EFFECTIVE DATE NOTE: At 69 FR 39208, June 29, 2004, § 80.615 was added, effective Aug. 30, 2004.

### §§ 80.616–80.619 [Reserved]

PROVISIONS FOR FOREIGN REFINERS AND IMPORTERS FOR MOTOR VEHICLE DIESEL FUEL SUBJECT TO A TEMPORARY COMPLIANCE OPTION OR HARDSHIP PROVISION

### § 80.620 What are the additional requirements for motor vehicle diesel fuel produced by foreign refineries subject to a temporary refiner compliance option or hardship provisions?

(a) *Definitions.* (1) A foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam,