

## Environmental Protection Agency

## § 80.615

this section, and any associated adjustments of the automated additive package injection equipment;

(ii) For all blending facilities that blend an additive package containing a static dissipater additive and/or red dye, product transfer documents for all such additive packages, and MVNRLM diesel fuel transferred into or out of the facility that is additized with an additive package containing a static dissipater additive and/or red dye;

(iii) For all automated additive package blending facilities that use an additive package containing a static dissipater additive and/or red dye, 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 blenders of an additive package that contains a static dissipater additive and/or red dye, the documentation, if in the party's possession, supporting the volumes of MVNRLM diesel fuel and additive package reported on the VAR formula record.

(7) *Document retention and availability.* All blenders of an additive package that contains a static dissipater additive and/or red dye 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.

(i) Except as provided in paragraph (f)(7)(iii) of this section, automated additive package blender facilities and hand-blender facilities which are terminals, which physically blend an additive packages that contains a static dissipater additive and/or red dye 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 additive package facilities which physically blend additive package that contains a static dissipater additive and/or red dye 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 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.

[69 FR 39205, June 29, 2004, as amended at 71 FR 25723, May 1, 2006]

### § 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

**§ 80.616**

**40 CFR Ch. I (7–1–08 Edition)**

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 noncomplying 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]

**§ 80.616 What are the enforcement exemptions for California diesel distributed within the State of California?**

(a) For the purpose of this section, “California diesel fuel” is defined as any diesel fuel physically within the State of California that satisfies all requirements of Title 13, California Code of Regulations, Sections 2281–2285, and is sold, intended for sale, or made available for sale as a motor fuel in the State of California, subsequent to May 31, 2006.

(b) Any retailer or wholesale purchaser-consumer of California diesel fuel is, with regard to such diesel fuel, exempt from the labeling requirements contained in §§ 80.570, 80.571, 80.572, 80.573, and 80.574.

(c)(1) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the product transfer requirements of § 80.590, provided that the product

transfer document contains the following statement:

“California diesel fuel. Maximum 15 ppm sulfur.”

(2) Product codes may be used to satisfy this product transfer document requirement.

(d) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the designation requirements of § 80.598, provided that:

(1) The refiner, importer, or distributor does not transfer custody of the California diesel fuel to facility outside the State of California;

(2) The fuel is intended to be sold or made available for sale in the State of California; and

(3) The PTD requirements in paragraph (f) of the section are satisfied.

(e) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the volume balance requirements of § 80.599.

(f) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the recordkeeping requirements under designate and track provisions of § 80.600.

(g) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the reporting requirements for the purposes of the designate and track provisions of § 80.601.

(h) Any refiner, importer, or distributor of California diesel fuel is, with regard to such diesel fuel, exempt from the recordkeeping requirements for entities in the MV or NRLM diesel fuel and diesel fuel additive production, importation, and distribution systems of §§ 80.592 and 80.602 except those relating to sampling and testing, under §§ 80.581, 80.584, 80.585, and 80.586.

(i) Any refiner or importer of California diesel fuel is, with regard to such diesel fuel, exempt from the annual reporting requirements for NRLM diesel under § 80.604.

[71 FR 25725, May 1, 2006]