

56. Section 80.612 is amended by revising paragraph (a) to read as follows:

§ 80.612 Who is liable for violations of this subpart?

(a) *Persons liable for violations of prohibited acts.* (1) *Standard, dye, marker, product segregation, additives, used motor oil, heating oil and introduction violations.* (i) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of §§ 80.610(a) through (d) occurred, or any other person who violates § 80.610(a) through (d), is deemed liable for the applicable violation.

(ii) Any person who causes another person to violate §§ 80.610(a) through (d) is liable for a violation of § 80.610(e).

(iii) Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of, diesel fuel that violates § 80.610(a), is deemed in violation of § 80.610(e).

(iv) Any person who produced, imported, sold, offered for sale, dispensed, supplied, offered to supply, stored, transported, or caused the transportation or storage of a diesel fuel additive which is used in motor vehicle diesel fuel or nonroad diesel fuel that is found to violate § 80.610(a), is deemed in violation of § 80.610(e).

(2) *Cause violating diesel fuel or additive to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, retailer, or wholesale purchaser-consumer or any other person who owned, leased, operated, controlled or supervised a facility from which diesel fuel or additive was released into the diesel fuel or additive distribution system which does not comply with the applicable standards or dye requirements of §§ 80.510, 80.511, 80.520, 80.521, 80.536 or 80.554 is deemed in violation of § 80.610(f).

(3) *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 § 80.610(a) occurred, is deemed in violation of § 80.610(a).

(4) *Carrier causation.* In order for a diesel fuel or diesel fuel additive carrier to be liable under paragraphs (a)(1)(ii), (iii) or (iv) of this section, as applicable, EPA must demonstrate, by reasonably specific showing by direct or

circumstantial evidence, that the carrier caused the violation.

(5) *Parent corporation.* Any parent corporation is liable for any violations of this subpart that are committed by any subsidiary.

(6) *Joint venture.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

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57. Section 80.613 is revised to read as follows:

§ 80.613 What defenses apply to persons deemed liable for a violation of a prohibited act under Subpart I?

(a) *Presumptive liability defenses.* (1) Any person deemed liable for a violation of a prohibition under § 80.612 (a)(1)(i) or (iii), (a)(2), or (a)(3), will not be deemed in violation if the person demonstrates:

(i) The violation was not caused by the person or the person's employee or agent;

(ii) Product transfer documents account for fuel or additive found to be in violation and indicate that the violating product was in compliance with the applicable requirements when it was under the party's control;

(iii) The person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section, except for those parties subject to the provisions of paragraph (a)(1)(iv) or (v) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the diesel fuel in question, provided that the quality assurance program is carried out properly. Retailers, wholesale purchaser-consumers, and ultimate consumers of diesel fuel are not required to conduct quality assurance programs;

(iv) For refiners and importers of diesel fuel subject to the 15 ppm standard under §§ 80.510(b) or 80.520(a)(1), or the 500 ppm sulfur standard under § 80.510(a), test results which:

(A) Were conducted according to an appropriate test methodology approved or designated under §§ 80.580 and 80.584–80.586; and

(B) Establish that, when it left the party's control, the sulfur content of the diesel fuel did not exceed the 15 ppm standard or the 500 ppm standard, as applicable;

(C) In lieu of testing for marker solvent yellow 124 concentration a refiner or importer may present evidence of an oversight program,

including records of marker inventory, purchase and addition, and records of periodic inspection and calibration of addition equipment that ensures that marker is added to heating oil under § 80.510(c)(1) or locomotive and marine diesel fuel under § 80.510(c)(2) in the required concentration; and

(v) For refiners and importers of heating oil or LM diesel fuel subject to the marker requirements under § 80.510(c), data which demonstrates that when it left the parties custody, the marker content was greater than or equal to 0.6 mg/L; and

(vi) For any person who, at a downstream location, blends a diesel fuel additive subject to the requirements of § 80.521(b) into motor vehicle diesel fuel or nonroad diesel fuel subject to the 15 ppm sulfur standard under §§ 80.520(a) or 80.510(b), except a blender who blends additives into fuel tanker trucks at a truck loading rack subject to the provisions of (d)(2) of this section, test results which are conducted subsequent to the blending of the additive into the fuel, and which comply with the requirements of paragraphs (a)(4)(iv)(A) and (B) of this section.

(2) Any party deemed liable for a violation under § 80.612(a)(1)(iv), in regard to a diesel fuel additive subject to the requirements of § 80.521(a), will not be deemed in violation if the person demonstrates that:

(i) Product transfer document(s) account for the additive in the fuel found to be in violation, which comply with the requirements under § 80.591(a), and indicate that the additive was in compliance with the applicable requirements while it was under the party's control; and

(ii) For the additive's manufacturer or importer, test results which accurately establish that, when it left the party's control, the additive in the diesel fuel determined to be in violation did not have a sulfur content in excess of 15 ppm.

(A) Analysis of the additive sulfur content pursuant paragraph (a)(2) of this section may be conducted at the time the batch was manufactured or imported, or on a sample of that batch which the manufacturer or importer retains for such purpose for a minimum of two years from the date the batch was manufactured or imported;

(B) After two years from the date the additive batch was manufactured or imported, the additive manufacturer or importer is no longer required to retain samples for the purpose of complying with the testing requirements of this paragraph (a)(2) of this section.