

(C) The analysis of the sulfur content of the additive must be conducted pursuant to the requirements of § 80.580.

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

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

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

(iii) 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 was in conformity with the information on the additive product transfer document pursuant to the requirements of § 80.591(b). The testing procedures applicable under paragraph (a)(2) of this section, also apply under paragraph (a)(3) of this section; and

(b) *Branded refiner defenses.* In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required under paragraph (a)(1) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this Part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, oxygenate blender, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of diesel fuel, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) *Causation demonstration.* Under paragraph (a)(1) of this section for any

person to show that a violation was not caused by that person, or under paragraph (b) of this section to show that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance and testing program.* To demonstrate an acceptable quality assurance program under paragraph (a)(1)(iii) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the diesel fuel or additive the person sold, dispensed, supplied, stored, or transported, meets the applicable standards; and

(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; and

(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.

58. Section 80.614 is revised to read as follows:

§ 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 §§ 80.510, 80.511, 80.520, 80.524, or 80.554, 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 diesel fuel remains any place in the distribution system.

(2) Any person liable under § 80.612(a)(2) for causing motor vehicle diesel fuel or nonroad, locomotive or marine diesel fuel, or heating oil, to be in the distribution system which does not comply with an applicable standard or requirement of §§ 80.510, 80.511, or 80.520 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 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 or nonroad 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 or nonroad, locomotive or marine diesel fuel, or heating oil in question remained in the 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, nonroad, locomotive or marine diesel fuel, or heating oil, 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