

Enforcement of the Federal Low Sulfur Diesel Fuel Programs



*Ultra-Low Sulfur Diesel Implementation
Workshop*



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Compliance Goals

- Applicable Sulfur standard - from refinery through retailer/end user
- Cetane/aromatics – refinery through retail/end user
- Dye (if applicable)
- Marker (if applicable)



Compliance Goals

Refiner/Importer Requirements

- Test every batch of 15 ppm diesel fuel
 - Probably prior to the transfer point relevant for D&T
- Temporary compliance option
- Small refiner options
- GPA option
- Hardship provisions
- Credit generation, use and transfer
- DTAB
- Reporting/recordkeeping/Designations



Compliance Goals

Downstream Requirements

- Designate and track requirements and limitations
- Anti-downgrading
- Kerosene use
- Additive standards and use
- Product transfer documents
- Fuel pump stand labeling
- Reporting and recordkeeping



Compliance Goals

Prevention of Misfueling and Contamination

- Misfueling
- Misdeliveries
- Contamination
 - **Throughout distribution system**
 - **Storage tank transitions!**
- Use of used motor oil in engines requiring 15 ppm fuel unless:
 - allowed under certificate of conformity
 - & done as per engine manufacturer's instructions



Violations and Liability

- Violations of prohibited acts or requirements are subject to Clean Air Act penalties
- Presumptive liability scheme like other fuels programs
 - Liability for distributing/dispensing fuel not meeting the applicable standard/requirements at a party's facility
 - Liability for downstream violations
 - “Vicarious” liability for branded refiners



Defenses to Presumptive Liability

(in general)

- Did not cause
- PTDs account for product & show compliance when in custody of the party; **and**
- QA program including sampling & testing



Defenses-

Branded Refiner/Importer

- Branded refiners have same defense elements as in other rules
- Branded refiner defense element: periodic downstream sampling and testing
 - Retail level compliance in fuel sulfur programs is extremely important; EPA will vigorously enforce
 - We will issue NOVs to branded refiners for retail violations
 - Must meet contract & downstream QA defense element



Defenses- Downstream

- Truck carriers may use alternative oversight & rely on another party's sampling and testing
- Retailers/wp-c's not required to sample & test
- If downstream blender blends additive having > 15 ppm sulfur content:
 - Greater risk of violation & liability – strong incentive to not blend or to test every batch (see § 80.613(d)(2))
 - Static dissipater additive blenders may use VAR approach (see § 80.614)



Other Trucker/Retailer Liability Issues

- “Marketer” (distributor and retailer)
 - **Periodic sampling & testing defense element applies to distributor**
- Distributors and Retailers must inspect PTDs and reject improper fuel deliveries.
 - **If misdelivery violation occurs, must stop sale and promptly remedy violation**
- Retailer and trucker must assure fuel dropped into proper tank
- Pump labels



Other Trucker/Retailer Liability Issues

- Truckers must ensure that truck is fully drained of any high sulfur product before picking up low sulfur product



Other Retailer Liability Issues

Misfueling

Any “person” (including a retailer or wp-c) is liable for:

- “Introducing” noncompliant fuel
 - E.g., retailer pumps >15 ppm fuel into vehicle or equipment requiring 15 ppm fuel
- “Permitting the introduction” of noncompliant fuel
 - We will look for retailers who condone misfueling or cause it by improper pump labeling, other practices
 - Retail employees not expected to risk safety to stop self-serve violations
 - Construction sites, etc.; Mobile refuelers



Other Downstream Issues

- Designate & track— *e.g.*, violation of balances
- Failure to add dye or marker (terminal)
- Distribution, dispensing of fuel containing dye or marker for an improper use



Other Downstream Issues

Kerosene Blending (§ 80.525)

- Kerosene blenders subject only to downstream requirements if conditions met
- Conditions include:
 - PTD for kerosene intended for blending into 15 ppm fuel must indicate meets the 15 ppm std.; **or**
 - The blender must have test results showing the kerosene meets the 15 ppm std.
- We intend to amend § 80.525 to include NR fuel



Other Downstream Issues

Downstream Additive Blending (§ 80.521)

- MVNRLM Additives blended downstream
 - Additive PTDs w/ specified language
 - If for use in 15 ppm fuel, must meet 15 ppm std.; or
 - Additive may be >15 ppm if <1% of fuel volume & PTD warnings
 - Blender liable if fuel >15 ppm
 - QA defense: didn't cause; PTDs; test every batch or if S-D additive may use VAR approach.
- Consumer additives



Other Downstream Issues

Transmix

- If process transmix, you are a refiner
- But if no blendstocks or crude processing:
 - MV diesel fuel: 500 ppm std. till June 1, 2010-then 15
 - NRLM:
 - >500 till June 1, 2010 except for AK & N.E.
 - 500 ppm till June 1, 2014 except for AK & N.E.
 - 15 ppm starting June 1, 2014



Other Downstream Issues

Biodiesel blending

- If biodiesel is received from a fuel manufacturer/refiner then terminal is just blending 2 diesel fuels
 - Resulting mixture must meet applicable standards
- Biodiesel is diesel fuel and must meet all standards and requirements, including refiner/importer requirements.



Exemptions

- **Exported fuel: PTDs/recordkeeping**
- **Approved research**
- **Limited military exemptions**
- **Territories exempt if:**
 - **Designated by refiner for use in territories & used there**
 - **Special PTD language**
 - **Segregated from non-exempt MVNRLM**
- **Alaska**
 - **Highway system (FAHS) parts of state are included in the national program (but with dye/marker exemptions)**
 - **Intend to issue NPRM soon re rural Alaska**

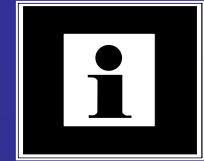


Refiner hardship waivers and Enforcement Discretion

- Extreme hardship - crude refiner may petition for delayed compliance - § 80.560
- Force Majeure - § 80.561
 - Extreme, unusual and unforeseen circumstances
 - Substantial conditions
- In no case may fuel exceeding 15 ppm be used in engines requiring 15 ppm fuel



For More Information...



See Q&As

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