

## Environmental Protection Agency

## § 1090.1715

transferred, used, or made available for use.

(c)(1) Any person liable under this part for a violation of a per-gallon standard, or for causing another party to violate a per-gallon standard, is subject to a separate day of violation for each day the non-complying fuel, fuel additive, or regulated blendstock remains any place in the distribution system.

(2) For the purposes of paragraph (c)(1) of this section, the length of time the fuel, fuel additive, or regulated blendstock that violates a per-gallon standard remained in the 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 fuel, fuel additive, or regulated blendstock remained in the distribution system for fewer than or more than 25 days.

(d) Any person liable for failure to meet, or causing a failure to meet, any other provision of this part is liable for a separate day of violation for each day such provision remains unfulfilled.

(e) Failure to meet separate requirements of this part count as separate violations.

(f) Violation of any misfueling prohibition under this part counts as a separate violation for each day the non-compliant fuel, fuel additive, or regulated blendstock remains in any engine, vehicle, or equipment.

(g) The presumed fuel parameter values in this paragraph (g) apply for cases in which any person fails to comply with the sampling or testing requirements and must be reported, unless EPA, in its sole discretion, approves a different value. Any person requesting the use of alternative test values must submit their request to EPA as specified in § 1090.10 within 30 days of discovering failure to comply with sampling and testing requirements, except that the request will be considered timely if the sampling and testing violation is self-disclosed under EPA's audit policy and the request is submitted by the certification deadline for the self-disclosure.

(1) For gasoline: 339 ppm sulfur, 1.64 volume percent benzene, and 11 psi RVP.

(2) For diesel fuel: 1,000 ppm sulfur.

(3) For ECA marine fuel: 5,000 ppm sulfur.

(4) For the PCG portion for PCG by subtraction under § 1090.1320(a)(1): 0 ppm sulfur and 0 volume percent benzene.

(5) For fuel additives: 339 ppm sulfur.

(6) For regulated blendstocks: 339 ppm sulfur and 1.64 volume percent benzene.

[85 FR 78469, Dec. 4, 2020, as amended at 90 FR 4367, Jan. 15, 2025]

### § 1090.1715 Liability provisions.

(a) Any person who violates any prohibited act or requirement in this part is liable for the violation.

(b) Any person who causes someone to commit a prohibited act under this subpart is liable for violating that prohibition.

(c) Any parent corporation is liable for any violation committed by any of its wholly owned subsidiaries.

(d) Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or facility owned by the joint owners, or any violation of this part that is committed by the joint venture operation or any of the joint owners of the facility.

(e)(1) Any person who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, caused the transportation or storage of, or introduced into commerce fuel, fuel additive, or regulated blendstock that is in the storage tank containing fuel, fuel additive, or regulated blendstock that is found to be in violation of a per-gallon standard is liable for the violation.

(2) In order for a carrier to be liable under paragraph (e)(1) of this section, EPA must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the carrier caused the violation.

(f) If a fuel manufacturer's corporate, trade, or brand name is displayed at a facility where a violation occurs, the fuel manufacturer is liable for the violation. This also applies where the displayed corporate, trade, or brand name

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is from the fuel manufacturer's marketing subsidiary.

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**§ 1090.1720 Affirmative defense provisions.**

(a) Any person liable for a violation under § 1090.1715(e) or (f) will not be deemed in violation if the person demonstrates all the following:

(1) The violation was not caused by the person or the person's employee or agent.

(2) If PTD requirements of this part apply, the PTDs account for the fuel, fuel additive, or regulated blendstock found to be in violation and indicate that the violating fuel, fuel additive, or regulated blendstock was in compliance with the applicable requirements while in that person's control.

(3) The person conducted a quality assurance program, as specified in paragraph (d) of this section.

(i) A carrier may rely on the quality assurance program carried out by another party, including the party that owns the fuel in question, provided that the quality assurance program is carried out properly.

(ii) A retailer or WPC is not required to conduct sampling and testing of fuel as part of their quality assurance program.

(b) For a violation found at a facility operating under the corporate, trade, or brand name of a fuel manufacturer, or a fuel manufacturer's marketing subsidiary, the fuel manufacturer must show, in addition to the defense elements required under paragraph (a) of this section, that the violation was caused by one of the following:

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

(2) The action of any retailer, distributor, reseller, oxygenate blender, carrier, retailer, or WPC in violation of a contractual agreement between the branded fuel manufacturer and the person designed to prevent such action, and despite periodic sampling and testing by the branded fuel manufacturer to ensure compliance with such contractual obligation.

(3) The action of any carrier or other distributor not subject to a contract

with the fuel manufacturer, but engaged for transportation of fuel, fuel additive, or regulated blendstock despite specifications or inspections of procedures and equipment that are reasonably calculated to prevent such action.

(c) For any person to show under paragraph (a) of this section that a violation was not caused by that person, or to show under paragraph (b) of this section that a violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showings, through 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) To demonstrate an acceptable quality assurance program under paragraph (a)(3) of this section, a person must present evidence of all the following:

(1)(i) A periodic sampling and testing program adequately designed to ensure the fuel, fuel additive, or regulated blendstock the person sold, dispensed, supplied, stored, or transported meets the applicable per-gallon standard. A person may meet this requirement by participating in the NFSP under § 1090.1405 that was in effect at the time of the violation.

(ii) In addition to the requirements of paragraph (d)(1)(i) of this section, a gasoline manufacturer must also participate in the NSTOP specified in § 1090.1450 at the time of the violation.

(2) On each occasion when a fuel, fuel additive, or regulated blendstock is found to be in noncompliance with the applicable per-gallon standard, the person does all the following:

(i) Immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing, or transporting the non-complying fuel, fuel additive, or regulated blendstock.

(ii) Promptly remedies the violation and the factors that caused the violation (*e.g.*, by removing the non-complying fuel, fuel additive, or regulated blendstock from the distribution system until the applicable standard is achieved and taking steps to prevent

future violations of a similar nature from occurring).

(3) For any carrier that transports a fuel, fuel additive, or regulated blendstock in a tank truck, the periodic sampling and testing program required under paragraph (d)(1) of this section does not need to include periodic sampling and testing of gasoline in the tank truck. In lieu of such tank truck sampling and testing, the carrier must demonstrate evidence of an oversight program for monitoring compliance with the requirements of this part relating to the transport or storage of the fuel, fuel additive, or regulated blendstock by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable per-gallon standards and PTD requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

(e) In addition to the defenses provided in paragraphs (a) through (d) of this section, in any case in which an oxygenate blender, distributor, reseller, carrier, retailer, or WPC would be in violation under § 1090.1715 as a result of gasoline that contains between 9 and 10 percent ethanol (by volume) but exceeds the applicable standard by more than 1.0 psi, the oxygenate blender, distributor, reseller, carrier, retailer, or WPC will not be deemed in violation if such person can demonstrate, by showing receipt of a certification from the facility from which the gasoline was received or other evidence acceptable to EPA, all the following:

(1) The gasoline portion of the blend complies with the applicable RVP standard in § 1090.215.

(2) The ethanol portion of the blend does not exceed 10 percent (by volume).

(3) No additional alcohol or other additive has been added to increase the RVP of the ethanol portion of the blend.

(4) In the case of a violation alleged against an oxygenate blender, distributor, reseller, or carrier, if the demonstration required by paragraphs (e)(1) through (3) of this section is made by a certification, it must be supported by evidence that the criteria in paragraphs (e)(1) through (3) of this

section have been met, such as an oversight program conducted by or on behalf of the oxygenate blender, distributor, reseller, or carrier alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification will be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or WPC facility, such certification will be deemed an adequate defense for the retailer or WPC, provided that the retailer or WPC is able to show certificates for all the gasoline contained in the storage tank found in violation, and, provided that the retailer or WPC has no reasonable basis to believe that the facts stated in the certifications are inaccurate.

[85 FR 78469, Dec. 4, 2020, as amended at 89 FR 14775, Feb. 29, 2024]

### Subpart S—Attestation Engagements

#### § 1090.1800 General provisions.

(a) The following parties must arrange for attestation engagement using agreed-upon procedures as specified in this subpart:

(1) A gasoline manufacturer that produces or imports gasoline subject to the requirements of subpart C of this part.

(2) A gasoline manufacturer that performs testing as specified in subpart N of this part or that relies on testing from a third-party laboratory.

(3) A gasoline manufacturer that transacts sulfur or benzene credits under this part.

(b) An auditor performing attestation engagements must meet the following requirements:

(1) The auditor must meet one of the following professional qualifications:

(i) The auditor may be an internal auditor that is employed by the fuel manufacturer and certified by the Institute of Internal Auditors. Such an auditor must perform the attestation

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engagement in accordance with the *International Standards for the Professional Practice of Internal Auditing (Standards)* (incorporated by reference in §1090.95).

(ii) The auditor may be a certified public accountant, or firm of such accountants, that is independent of the gasoline manufacturer. Such an auditor must comply with the *AICPA Code of Professional Conduct*, including its independence requirements, the *AICPA Statements on Quality Control Standards (SQCS) No. 8, A Firm’s System of Quality Control*, the *AICPA Statement on Quality Management Standards (SQMS) No. 1, No. 2, and No. 3* (all incorporated by reference, see §1090.95), and applicable rules of state boards of public accountancy. Such an auditor must also perform the attestation engagement in accordance with the *AICPA Statement on Standards for Attestation Engagements (SSAE) No. 19, Agreed-Upon Procedures Engagements*, especially as noted in sections AT-C 105, 215, and 315 (incorporated by reference, see §1090.95).

(2) The auditor must meet the independence requirements in §1090.55.

(3) The auditor must be registered with EPA under subpart I of this part.

(4) Any auditor suspended or debarred under 2 CFR part 1532 or 48 CFR part 9, subpart 9.4, is not qualified to perform attestation engagements under this subpart.

(c) An auditor must perform attestation engagements separately for each gasoline manufacturing facility for which the gasoline manufacturer submitted reports to EPA under subpart J of this part for the compliance period.

(d) The following provisions apply to each attestation engagement performed under this subpart:

(1) The auditor must prepare an attestation engagement report identifying the applicable procedures specified in this subpart along with the auditor’s corresponding findings for each procedure. The auditor must submit the attestation engagement report electronically to EPA by June 1 of the year following the compliance period.

(2) The auditor must identify any instances where compared values do not agree or where specified values do not meet applicable requirements under this part.

(3) Laboratory analysis refers to the original test result for each analysis of a product’s properties. The following provisions apply in special cases:

(i) For a laboratory using test methods that must be correlated to the standard test method, the laboratory analysis must include the correlation factors along with the corresponding test results.

(ii) For a gasoline manufacturer that relies on a third-party laboratory for testing, the laboratory analysis consists of the results provided by the third-party laboratory.

[85 FR 78469, Dec. 4, 2020, as amended at 90 FR 4367, Jan. 15, 2025]

**§ 1090.1805 Representative samples.**

(a) If the specified procedures require evaluation of a representative sample from the overall population for a given data set, determine the number of results for evaluation using one of the following methods:

(1) Determine sample size using the following table:

TABLE 1 TO PARAGRAPH (a)(1)—SAMPLE SIZE DETERMINATION

Population	Sample size
1–25 .....	The smaller of the population or 19.
26–40 .....	20.
41–65 .....	25.
66 or more .....	29.

(2) Determine sample size corresponding to a confidence level of 95 percent, an expected error rate of 0 percent, and a maximum tolerable error rate of 10 percent, using conventional statistical principles and methods.

(3) Determine sample size using an alternate method that is equivalent to or better than the methods specified in paragraphs (a)(1) and (2) of this section with respect to strength of inference and freedom from bias. An auditor that determines a sample size using an alternate method must describe and justify the alternate method in the attestation engagement report.

(b) Select specific data points for evaluation over the course of the compliance period in a way that leads to a simple random sample that properly

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represents the overall population for the data set.

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### § 1090.1810 General procedures for gasoline manufacturers.

An auditor must perform the procedures specified in this section for a gasoline manufacturer that produces gasoline in the United States.

(a) *Registration and reports.* An auditor must review registration and reports as follows:

(1) Obtain copies of the gasoline manufacturer's registration information submitted under subpart I of this part and all reports (except batch reports) submitted by the gasoline manufacturer under subpart J of this part.

(2) For each gasoline manufacturing facility, confirm that the facility's registration is accurate based on the activities reported during the compliance period, including that the registration for the facility and any related updates were completed prior to conducting regulated activities at the facility and report any discrepancies.

(3) Confirm that the gasoline manufacturer submitted all reports required under subpart J of this part for activities they performed during the compliance period and report any exceptions.

(4) Obtain a written statement from the gasoline manufacturer's RCO that the submitted reports are complete and accurate.

(5) Report the name of any commercial computer program used to track any data required under this part.

(b) *Inventory reconciliation analysis.* An auditor must review an inventory reconciliation analysis as follows:

(1) Obtain an inventory reconciliation analysis from the gasoline manufacturer for each gasoline type produced at each facility (*e.g.*, RFG, CG, RBOB, CBOB), including the inventory at the beginning and end of the compliance period and inventory records (*e.g.*, receipts, production volumes, shipments, transfers, and gain/loss).

(2) Foot and cross-foot the volumes by gasoline type.

(3) Compare the beginning and ending inventory to the inventory records for each gasoline type and report any variances.

(4) Report the total volume of each gasoline type.

(c) *Listing of gasoline tenders.* An auditor must review a listing of gasoline tenders as follows:

(1) Obtain a detailed listing of gasoline tenders from the gasoline manufacturer, by gasoline type.

(2) Foot the tender volumes by gasoline type.

(3) Compare the total volume from the tenders to the inventory reconciliation analysis obtained under paragraph (b) of this section for each gasoline type and report any variances.

(d) *Listing of gasoline batches.* An auditor must review a listing of gasoline batches as follows:

(1) Obtain the gasoline batch reports submitted by the gasoline manufacturer under subpart J of this part.

(2) Foot the batch volumes by gasoline type.

(3) Compare the total volume from the batch reports to the inventory reconciliation analysis obtained under paragraph (b) of this section for each gasoline type and report any variances.

(4) Report as a finding any batch with a reported value that does not meet a per-gallon standard in subpart C of this part.

(e) *Test methods.* An auditor must follow the procedures specified in §1090.1845 to determine whether the gasoline manufacturer complies with the applicable quality control requirements specified in §1090.1375.

(f) *Detailed testing of BOB tenders.* An auditor must review a detailed listing of BOB tenders as follows:

(1) Select a representative sample of BOB tenders from the listing of tenders obtained under paragraph (c) of this section.

(2) Obtain the associated PTD for each selected tender.

(3) Using a unique identifier, confirm that the correct PTDs are obtained for the selected tenders.

(4) Compare the volume on the listing for each selected tender to the associated PTD and report any exceptions.

(5) Confirm that the PTD associated with each selected tender contains all the applicable language required under subpart L of this part and report any exceptions.