

NBB FUEL QUALITY ENFORCEMENT GUIDE

ASTM D-6751 ENFORCEMENT

I. FEDERAL AGENCIES.

A. **Internal Revenue Service.** The IRS has an active enforcement division for fuel compliance, which includes approximately 130 Fuel Compliance officers nationwide, who routinely enforce fuel issues related to gasoline and diesel fuel. The IRS currently coordinates with the American Petroleum Institute on issues related to fuel compliance.

1. ASTM D-6751 compliance is required of biodiesel gallons on which Biodiesel Tax Credit is claimed. 26 U.S.C. 40A(d)(1).
2. The blender claiming the credit is required to obtain from the biodiesel producer a certificate stating, under penalty of perjury, that the biodiesel or agri-biodiesel is properly registered with the EPA and meets the requirements of ASTM D-6751. IRS Notice 2005-62, sec. 2(h)(ii).
3. IRS penalties: One who willfully signs any return, statement, or other document filed under penalties of perjury, which document is known not to be true and correct as to every material matter, shall be guilty of a felony, and upon conviction, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation) or imprisoned not more than three years, or both, together with the costs of prosecution. 26 U.S.C. 7206.

B. Environmental Protection Agency.

1. No motor fuel or motor fuel additive may be sold in the United States unless it is registered with the EPA under the Clean Air Act. 42 U.S.C. 7545(b); 40 C.F.R. Part 79.
2. A biodiesel producer may satisfy the Tier 1 and Tier 2 by a) conducting the testing according to 40 C.F.R. 79, or b) by arranging for access to “Group Data” on the testing of a product which is representative of all products in that group. 40 C.F.R. 79.56.
3. The National Biodiesel Board completed the required testing and submitted the required Health Effects Group Data on biodiesel that met the nationally accepted biodiesel standard at the time of testing. This standard has since been adopted as ASTM D 6751, which has incorporated various improvements over time.
4. Therefore any biodiesel that obtains registration via access to the National Biodiesel Board’s Health Effects Data must meet the current version of ASTM D-6751.
5. An EPA inspector has, upon presentation of appropriate credentials, the right to enter any refinery, distributor, carrier, importer, wholesale purchaser, or retail outlet to make inspections, take samples, obtain information and records, and conduct tests to determine compliance with the fuel quality regulations of this Part. 40 CFR 80.4.
6. EPA’s motor fuel regulations are enforced by the EPA Office of Enforcement and Compliance Assurance and by the Certification and Compliance Division of the Office of Transportation and Air Quality

(OTAQ). OTAQ inspectors collect and test samples both on a regular basis and on a complaint basis. OTAQ inspectors have full access to the National Vehicle and Fuel Emissions Laboratory and its 400 employees at Ann Arbor, Michigan.

7. Penalties: Any person who violates EPA regulations shall be liable to the United States for a civil penalty of not more than \$25,000 for every day of such violation plus the amount of economic benefit or savings resulting from the violation. 40 CFR 80.5.
8. Parties deemed in violation: When violation of an EPA fuel standard is detected at a carrier's facility, the carrier and the refiner shall be deemed in violation. When detected at a distributor's facility, the distributor, the carrier, and the refiner shall be deemed in violation. When detected at a branded retail outlet, the retailer, the distributor, the carrier, and the refiner shall be deemed in violation. 40 CFR 80.30.

C. **State Agencies:** Most routine enforcement measures for fuels in the United States are conducted by state government through their bureau of weights and measures. The majority of states regulate fuel quality for all types of fuels, and have sufficient state statutory authority to enforce fuel quality compliance. However, not all states currently regulate all fuels, and a few states do not regulate any fuels. NBB has an active project to catalogue the information by state and to educate states about biodiesel so that they can effectively monitor biodiesel quality. NBB has gathered information for various states and currently makes it available on the members section of the NBB website. Once this database becomes more fully populated, it is expected that it will be moved to a public section of the site.

The information is currently obtained by going to the Members section under "State Fuel Quality Regulation." Click on "State One Pagers." Here's a sample of the information in the database:

MISSOURI

- State Agency Contact Info: Missouri Department of Agriculture:
Ronald Hayes
P.O. Box 630
Jefferson City, Mo. 65110-0630
Ph. 573-751-2922
ron.hayes@mda.mo.gov
- ASTM standards adopted for: Diesel Fuel (D 975) and Biodiesel (D 6751).
- Does the state proactively test diesel fuel; biodiesel? Biodiesel, yes.
- Test consists of: Visual inspection; water + sediment; density; cloud point; flash point.
- At what point are samples taken? Producer; Marketer; Distributor, receipt of interstate fuel.

- In-House Laboratory? Yes.
- Sample upon credible consumer complaint? Yes.
- Penalties for selling off-spec fuel? Class “A” misdemeanor. Temporary injunction.
- Civil penalty: Not to exceed \$500. Each day of violation is a separate offense.

Missouri is a good example of a state that has adopted ASTM D 6751, and has a Division of Weights and Measures that actively monitors and enforces fuel quality. NBB will continue to work with other states to determine their statutory and regulatory system pertaining to biodiesel. NBB will continue the encouragement of the adoption and enforcement of ASTM D 6751 at the state level.

II. **GUIDANCE, FILING A COMPLAINT SEEKING ASTM D-6751 ENFORCEMENT BY A GOVERNMENT AGENCY:**

- A. **First Call Your Fuel Supplier.** Your first call on any fuel quality problem should be to your fuel supplier. He’s the one immediately responsible for your full satisfaction. He’s the one with connections to the B100 producer and, quite frankly, has more leverage over the B100 producer than you. Help your fuel supplier investigate and remedy the problem. You should proceed to file a complaint with the government only after you and your fuel supplier have not resolved the problem. If you do proceed with a complaint to the government, 1) The government agency will likely ask you whether you’ve called your fuel supplier; and 2) Your complaint is likely to receive more serious attention if it’s supported by your fuel supplier.
- B. **Always tell the truth.** There is no liability for seeking enforcement of a law upon complaint made in good faith. But statements made in bad faith, out of malice, where the assertions are known not to be true, can lead to civil liability for slander, malicious prosecution, and false claim. So always proceed truthfully; in good faith.
- C. **Always put it in writing.** To constitute an actionable complaint, the complainant should specify in writing:
 1. Your name and effective contact information. These agencies will not act on the basis of an anonymous complaint. Indeed, you shouldn’t be surprised if a government official calls you to get a better measure of both you and the validity of your complaint.
 2. Name, address, and telephone number of your fuel supplier.
 3. Name, address, and telephone number of the producer of the B100 complained of.
 4. The steps you and your fuel supplier have taken to determine the cause of the problem; results of your investigation and attempts to solve the problem.
 5. In your own words, the objective evidence in your possession that would constitute reasonable cause for the govt. agency to commence an investigation of the B100 produced.

- E.g. you have had the fuel tested yourself, and have test results indicating noncompliance.
 - Damage caused to your vehicle over a period of continued use of the fuel in question. Evidence of that use. Evidence of the damage.
 - Describe the physical characteristics of the fuel, i.e.: dirty, cloudy, or contaminated fuel in your possession. (Preferably, enclose a sample).
 - Tell whether the biodiesel you complain of is still being produced and sold. The government is less likely to investigate if they think the producer of the suspect biodiesel has closed up shop and gone away.
 - Write a concise letter stating all of the above. With limited resources, no government agency wants to be wasting its inspectors' time.
7. If possible, get your fuel supplier to co-sign the letter. Or another consumer with the same complaint.
 8. If you write to the IRS or EPA, copy your state government Bureau of Weights and Measures. Let them know they've got a problem.
 9. Always sign your name and date the letter. The IRS and EPA won't act on an anonymous, unsigned letter.

D. Write to the IRS and EPA. Copy your State Weights and Measures Office. If your State has an active enforcement program, write them.

Contact Information, Federal Agencies:

Environmental Protection Agency:

Mr. George Lawrence
 Chief, Mobile Source Enforcement Branch
 Office of Enforcement and Compliance Assurance
 U.S. Environmental Protection Agency
 2242A 1200 Pennsylvania Ave. N.W.
 Washington, D.C. 20460
 PH: 202-564-1307

Show and send a copy to:

Mr. Erv Pickell
 Air Enforcement Division
 Mobile Source Enforcement Branch
 U.S. Environmental Protection Agency
 12345 West Alameda Parkway, Suite 214
 Denver, Colorado 80228
 Ph. 303-236-9506

Internal Revenue Service

Mr. Richard Little, IRS
Senior Program Analyst, Motor Fuel Tax Division
300 North Los Angeles Street
Los Angeles, California 90012
Mail Stop: LA 4308
Ph.: 1-213-576-3837