



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

Small Business/Self-Employed Division

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MEMORANDUM FOR EXCISE TAX TERRITORY MANAGERS

FROM: W. Ricky Stiff **/S/ W. Ricky Stiff**
Chief, Excise Tax Program

SUBJECT: Interim Guidance for the Enforcement of IRC section 6720A by
Fuel Compliance Officers

This memorandum provides interim guidance to Fuel Compliance Officers (FCOs) on enforcing IRC § 6720A. Please ensure this information is distributed to all affected employees.

IRC § 6720A(a) imposes a penalty if any person knowingly transfers for resale, sells for resale, or holds out for resale, a liquid for use in a diesel-powered train or highway vehicle which does not meet the applicable EPA regulations. The term "applicable EPA regulations", as defined in IRC § 45(H)(c)(3), means the Highway Diesel Fuel Sulfur Control Requirements of the Environmental Protection Agency. The penalty is \$10,000 for each transfer, sale, or holding out for sale.

In the case of retailers, under IRC § 6720A(b), the penalty is assessed on any person who knowingly holds out for sale any such liquid. The penalty on retailers is \$10,000 for each such holding out for sale.

FCOs are the primary field personnel responsible for enforcing IRC § 6720A. FCOs will obtain samples for sulfur testing at any site in which fuel intended for use in a diesel-powered highway vehicle or train is transferred, sold, or held for resale.

Interim Guidance will be incorporated into IRM 4.24.13 by May 29, 2009.

If you have any questions please contact Mike Rhea.

Attachment

cc: www.IRS.gov

Addendum- IRC § 6720A Procedures

EPA Notice Requirement

The EPA regulations require pumps dispensing diesel with a maximum of

- 15 ppm sulfur to be labeled: “ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL (15 PPM SULFUR MAXIMUM)”
- 500 ppm sulfur to be labeled: “LOW SULFUR HIGHWAY DIESEL FUEL (500 PPM SULFUR MAXIMUM)”

The EPA regulations require any pump dispensing fuel for use in non-motor vehicle equipment be labeled: “NON-HIGHWAY DIESEL FUEL (May Exceed 500 ppm Sulfur)”.

The failure to post the required sulfur notice is a violation of the EPA labeling requirements, not IRC § 6720A. FCOs do not enforce the EPA labeling requirements.

Refer to the table below to determine when an IRC § 6720A penalty is applicable.

If	And	Then
The pump is labeled “ULTRA-LOW SULFUR HIGHWAY DIESEL FUEL (15 PPM SULFUR MAXIMUM)”	The concentration of sulfur is greater than 15 ppm	An IRC § 6720A may apply.
The pump is labeled “LOW SULFUR HIGHWAY DIESEL FUEL (500 PPM SULFUR MAXIMUM)”	The concentration of sulfur is greater than 500 ppm	An IRC § 6720A may apply.
The pump is not labeled but the fuel was transferred for resale, held for resale or sold for resale for use in a diesel-powered train or highway vehicle	The concentration of sulfur is greater than 500 ppm	An IRC § 6720A may apply.

Completing Form 9667 (Sample Bottle Sealing and Identification Label)

The Bottle, Chain of Custody, and Case File sections of the Form 9667 must include the:

- FCO ID
- Sample Date
- Type(s) of Test
 - Select *Sulfur*
 - If the FCO submits a dye sample and also wants the sulfur concentration test to be performed, the FCO must select the correct dye test (*Usage* or *Concentration*) in addition to the sulfur test.
- Fuel type
 - If the label on the pump states the fuel is ULSD, select *Diesel* and *ULS*.

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- If the label on the pump states the fuel LSD, select *Diesel*. In the space next to *Other* write "LSD"
- If there is no label, select *Diesel*. In the space next to *Other* write "No sulfur label"
- The FCO will select *Dyed* if the fuel is dyed or suspected to be dyed.
- The biodiesel blend percentage (i.e. B5, B20) will be recorded in the space next to *Bio%*.

Chain of Custody and Shipping Record

Whenever possible, the FCO should attach the properly completed chain of custody portion of the Form 9667 to the Chain of Custody and Shipping Record, Form 13927. If the label is not used the FCO will record "ULSD", "LSD" or "No sulfur label" in the Description of Sample column and "Sulfur Content" in the Type column. The biodiesel blend percentage (i.e. B5, B20) must also be recorded next to the sample number, if applicable. If the FCO submits a dye sample and wants the sulfur concentration test to be performed, the FCO must also record the correct dye test in the Type column.

ExFON Samples Screen

On ExFON, samples obtained for sulfur testing **only** will be recorded on the Samples screen as BTR Investigative.

Development of the Sulfur Issue

Since there is no visual indication of the sulfur content of the fuel, it is imperative FCOs consider every sample obtained for sulfur testing as a potential violation and obtain certain information about the fuel.

The FCO should obtain information pertaining to the samples such as, but not limited to:

- The sulfur notice, if any, on the bill of lading, invoices, delivery ticket, and/or the pump dispensing the fuel. The FCO should take pictures of the pump and notice.
- The biodiesel percentage, if applicable
- The amount of fuel in the tank at the time of the delivery
- Identification of previous fuel type stored in the tank if different from the current type
- Name and address of the supplier(s) of the fuel in the tank(s)
- Name of the person who placed the orders for the fuel
- Other possible sources of the product in the storage tank (both upstream and downstream sources)
- Additives placed in the fuel

If the results from the EFL indicate a potential adulterated fuel penalty, the FCO must establish who is responsible for the violation. Refer to IRM 4.24.13.9.3.1.2 for developing an adulterated fuel penalty. The FCO will use the facts and testimony to

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determine who knowingly transferred for resale, sold for resale or held out for resale a liquid for use in a diesel-powered train or highway vehicle which does not meet the applicable EPA regulations. In the absence of an admission of knowledge, if the FCO can establish a person ignored clear evidence of the sulfur content, knowledge of the fact may be presumed. For example, an FCO obtained a sample of fuel from a retail pump labeled as “Ultra-Low Sulfur Highway Diesel (15 PPM SULFUR MAXIMUM)”. The most recent delivery ticket shows the fuel delivered was low sulfur diesel with a sulfur concentration not exceeding 500 ppm. The lab result indicates a sulfur concentration of 125 ppm. The retailer denies knowing the fuel in the storage tank exceeded the sulfur concentration described on the pump label. Though the retailer denies direct knowledge, the retailer may be held responsible since the sulfur level was clearly indicated on the delivery ticket.

Closing the IRC § 6720A Inspection

Lab results indicating a possible sulfur concentration violation will be reported to the FCO group manager by email. If a lab result is not received within 15 days from the date the sample was shipped, the FCO may assume the sulfur concentration was within the allowable level.

If an IRC § 6720A penalty will be recommended

- The FCO will select Penalty Reference Code 673 on the Violation screen in ExFON
- A penalty package will be issued and the case marked as complete
- A hard copy of the case file will be given to the FCO manager

If the sulfur concentration is within the allowable limits and the taxpayer is otherwise in compliance, the FCO will issue the appropriate closing letter and close the inspection.