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remain in effect until the effective date of a subsequent change to the baseline pursuant to this paragraph (p).

(q) *Withdrawal or suspension of a foreign refinery's baseline.* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in 40 CFR part 80, subparts D, E and F; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, *ab initio*, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting

violation of the conventional gasoline requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under paragraph (b) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) or (g)(1)(ii) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or in the case of (g)(1)(ii) the vessel owner, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner or vessel owner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subparts D, E and F and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand that the provisions of 40 CFR part 80, subparts D, E and F, including 40 CFR 80.94 (i), (j) and (k), apply to [insert name of foreign refiner or vessel owner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000, and/or imprisonment for up to five years.

[62 FR 45563, Aug. 28, 1997]

§§ 80.95–80.100 [Reserved]

§ 80.101 Standards applicable to refiners and importers.

Any refiner or importer of conventional gasoline shall meet the standards specified in this section over the specified averaging period, beginning on January 1, 1995.

(a) *Averaging period.* The averaging period for the standards specified in this section shall be January 1 through December 31.

(b) *Conventional gasoline compliance standards—(1) Simple model standards.* The simple model standards are the following:

(i) Annual average exhaust benzene emissions, calculated according to paragraph (g)(1)(i) of this section, shall not exceed the refiner's or importer's compliance baseline for exhaust benzene emissions;

(ii) Annual average levels of sulfur shall not exceed 125% of the refiner's or importer's compliance baseline for sulfur;

(iii) Annual average levels of olefins shall not exceed 125% of the refiner's or importer's compliance baseline for olefins; and

(iv) Annual average values of T-90 shall not exceed 125% of the refiner's or importer's compliance baseline for T-90.

(2) *Optional complex model standards.* Annual average levels of exhaust benzene emissions, weighted by volume for each batch and calculated using the applicable complex model under § 80.45, shall not exceed the refiner's or importer's 1990 average exhaust benzene emissions.

(3) *Complex model standards.* (i) Annual average levels of exhaust toxics emissions and NO_x emissions, weighted by volume for each batch and calculated using the applicable complex model under § 80.45, shall not exceed the refiner's or importer's compliance baseline for exhaust toxics and NO_x emissions, respectively.

(ii) Annual average levels of RVP, benzene, aromatics, olefins, sulfur, E200 and E300 shall not be greater than the conventional gasoline complex model valid range limits for the parameter under § 80.45(f)(1)(ii), or the refiner or importer's annual 1990 baseline for the parameter if outside the valid range limit, whichever is greater.

(c) *Applicability of standards.* (1) For each averaging period prior to January 1, 1998, a refiner or importer shall be subject to either the Simple Model or Optional Complex Model Standards, at their option, except that any refiner or importer shall be subject to:

(i) The Simple Model Standards if the refiner or importer uses the Simple Model Standards for reformulated gasoline; or

(ii) The Optional Complex Model Standards if the refiner or importer used the Complex Model Standards for reformulated gasoline.

(2) Beginning January 1, 1998, each refiner and importer shall be subject to the Complex Model Standards for each averaging period.

(d) *Product to which standards apply.* Any refiner for each refinery, or any importer, shall include in its compliance calculations:

(1) Any conventional gasoline produced or imported during the averaging period;

(2) Any non-gasoline petroleum products that are produced or imported and sold or transferred from the refinery or group of refineries or importer during the averaging period, if required pursuant to § 80.102(e)(2), unless the refiner or importer is able to establish in the form of documentation that the petroleum products were used for a purpose other than the production of gasoline within the United States;

(3) Any gasoline blending stock produced or imported during the averaging period which becomes conventional gasoline solely upon the addition of oxygenate;

(4)(i) Any oxygenate that is added to conventional gasoline, or gasoline blending stock as described in paragraph (d)(3) of this section, where such gasoline or gasoline blending stock is produced or imported during the averaging period;

(ii) In the case of oxygenate that is added at a point downstream of the refinery or import facility, the oxygenate may be included only if the refiner or importer can establish the oxygenate was in fact added to the gasoline or gasoline blendstock produced, by showing that the oxygenate was added by:

(A) The refiner or importer; or

(B) By a person other than the refiner or importer, provided that the refiner or importer:

(1) Has a contract with the oxygenate blender that specifies procedures to be followed by the oxygenate blender that are reasonably calculated to ensure blending with the amount and type of

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oxygenate claimed by the refiner or importer; and

(2) Monitors the oxygenate blending operation to ensure the volume and type of oxygenate claimed by the refiner or importer is correct, through periodic audits of the oxygenate blender designed to assess whether the overall volumes and type of oxygenate purchased and used by the oxygenate blender are consistent with the oxygenate claimed by the refiner or importer and that this oxygenate was blended with the refiner's or importer's gasoline or blending stock, periodic sampling and testing of the gasoline produced subsequent to oxygenate blending, and periodic inspections to ensure the contractual requirements imposed by the refiner or importer on the oxygenate blender are being met.

(e) *Product to which standards do not apply.* Any refiner for each refinery, or any importer, shall exclude from its compliance calculations:

(1) Gasoline that was not produced at the refinery or was not imported by the importer;

(2) Blendstocks that have been included in another refiner's compliance calculations, pursuant to §80.102(e)(2) or otherwise;

(3) California gasoline as defined in §80.81(a)(2); and

(4) Gasoline that is exported.

(f) *Compliance baseline determinations.*

(1) In the case of any refiner or importer for whom an individual baseline has been established under §80.91, the individual baseline for each parameter

or emissions performance shall be the compliance baseline for that refiner or importer.

(2) In the case of any refiner or importer for whom the anti-dumping statutory baseline applies under §80.91, the anti-dumping statutory baseline for each parameter or emissions performance shall be the compliance baseline for that refiner or importer.

(3) [Reserved]

(4) Any compliance baseline under paragraph (f)(1) of this section shall be adjusted for each averaging period as follows:

(i) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in §80.81(a)(2), produced or imported by any refiner or importer during the averaging period is equal to or less than that refiner's or importer's 1990 baseline volume as determined under §80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be that refiner's or importer's individual 1990 baseline; or

(ii) If the total volume of the conventional gasoline, RBOB, reformulated gasoline, and California gasoline as defined in §80.81(a)(2), produced or imported by any refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under §80.91(f)(1), the compliance baseline for each parameter or emissions performance shall be calculated according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990}}{V_a} \right) \right) + \left(DB_i * \left(1 - \frac{V_{1990}}{V_a} \right) \right)$$

Where:

CB_i = The compliance baseline value for parameter or emissions performance i.

B_i = The refiner's or importer's individual baseline value for parameter or emission performance i calculated according to the methodology in §80.91.

DB_i = The anti-dumping statutory baseline value for parameter or emissions performance i, as specified at §80.91(c)(5)(iii) or (c)(5)(iv), respectively.

V₁₉₉₀ = The 1990 baseline volume as determined under §80.91(f)(1).

V_a = The total volume of reformulated gasoline, conventional gasoline, RBOB, and California gasoline as defined in §80.81(a)(2) produced or imported by a refiner or importer during the averaging period.

(iii) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its

individual baseline and which has met the requirements specified in paragraph (g)(1)(ii)(B) of this section, and whose total volume of conventional gasoline, RBOB, reformulated gasoline, and California gasoline, as defined in § 80.81(a)(2), produced or imported by the refiner or importer during the aver-

aging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), must calculate the compliance baseline for each parameter or emissions performance according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_a} \right) \right) + \left(BS_i * \left(\frac{V_{1990s}}{V_a} \right) \right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_a} \right) * \left(1 - \frac{V_{as}}{V_a} \right) \right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_a} \right) * \left(\frac{V_{as}}{V_a} \right) \right)$$

where:

- CB_i = the compliance baseline value for emissions performance i
- B_i = the refiner's or importer's individual annual baseline for emissions performance i under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27
- BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico and the U.S. Virgin Islands, for emissions performance i
- DBA_i = annual anti-dumping statutory baseline value for emissions performance i under § 80.91(c)(5)(iv)
- DBS_i = the summer statutory baseline value for emissions performance i under § 80.45(b)(3), table 5
- V_a = total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period
- V₁₉₉₀ = 1990 baseline volume under § 80.91(f)(1)
- V_{1990s} = 1990 baseline volume of gasoline supplied to Puerto Rico and the U.S. Virgin Islands
- V_{as} = volume of conventional gasoline supplied during the averaging period to Puerto Rico and the U.S. Virgin Islands
- i = exhaust toxics or NO_x emissions performance

(4) Any compliance baseline under paragraph (f)(1) of this section shall be adjusted for each averaging period as follows:

(g) *Compliance calculations*—(1)(i) *Simple model calculations*. In the case of any refiner or importer subject to an individual refinery baseline, the annual av-

erage value for each parameter or emissions performance during the averaging period, calculated according to the following methodologies, shall be less than or equal to the refiner's or importer's standard under paragraph (b) of this section for that parameter.

(A) The average value for sulfur, T-90, olefin, benzene, and aromatics for an averaging period shall be calculated as follows:

$$APARM = \left(\frac{\sum_{i=1}^n (V_i \times PARM_i \times SG_i)}{\sum_{i=1}^n V_i \times SG_i} \right)$$

where

- APARM = the average value for the parameter being evaluated
- V_i = the volume of conventional gasoline or other products included under paragraph (d) of this section, in batch i
- PARM_i = the value of the parameter being evaluated for batch i as determined in accordance with the test methods specified in § 80.46
- n = the number of batches of conventional gasoline and other products included under paragraph (d) of this section produced or imported during the averaging period
- SG_i = specific gravity of batch i (only applicable for sulfur)

(B) Exhaust benzene emissions under the Simple Model for an averaging period are calculated as follows:

$$EXHBEN = 1.884 + (0.949 \times BZ) + (0.113 \times (AR - BZ))$$

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where

EXHBEN = the average exhaust benzene emissions for the averaging period

BZ = the average benzene content for the averaging period, calculated per paragraph (g)(1)(i)(A) of this section

AR = the average aromatics content for the averaging period, calculated per paragraph (g)(1)(i)(A) of this section

(ii) Complex Model calculations.

(A) Exhaust benzene, exhaust toxics, and exhaust NO_x emissions performance for each batch shall be calculated in accordance with the applicable model under §80.45.

(B) A refiner which has Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its baseline shall use the summer Complex Model to evaluate its averaging period Puerto Rico and U.S. Virgin Islands gasoline provided it has petitioned the Agency, per §80.93(d), and has received Agency approval on the petition, and has revised its individual baseline, such that the Puerto Rico and U.S. Virgin Islands gasoline in its individual baseline has been evaluated using the summer Complex Model.

(2) In the case of any refiner or importer subject to the anti-dumping statutory baseline, the refiner or importer shall determine compliance using the following methodology:

(i) Calculate the compliance total for the averaging period for sulfur, T-90, olefins, exhaust benzene emissions, exhaust toxics and exhaust NO_x emissions, as applicable, based upon the anti-dumping statutory baseline value for that parameter using the formula specified at §80.67.

(ii) Calculate the actual total for the averaging period for sulfur, T-90, olefins, exhaust benzene emissions, exhaust toxics and exhaust NO_x emissions, as applicable, based upon the value of the parameter for each batch of conventional gasoline and gasoline blendstocks, if applicable, using the formula specified at §80.67.

(iii) The actual total for exhaust benzene emissions, exhaust toxics and exhaust NO_x emissions, shall not exceed the compliance total, and the actual totals for sulfur, olefins and T-90 shall not exceed 125% of the compliance totals, as required under the applicable model.

(3) Exhaust toxics and NO_x emissions performance of a blendstock batch shall be determined as follows:

(i) Determine the volume and properties of the blendstock.

(ii) Determine the blendstock volume fraction (F) based on the volume of blendstock, and the volume of gasoline with which the blendstock is blended, using the following equation:

$$F = \frac{V_b}{V_b + V_g}$$

where:

F = blendstock volume fraction

V_b = volume of blendstock

V_g = volume of gasoline with which the blendstock is blended

(iii) For each parameter required by the complex model, calculate the parameter value that would result by combining, at the blendstock volume fraction (F), the blendstock with a gasoline having properties equal to the refinery's or importer's baseline, using the following formula:

$$CP_j = \frac{(BAP_j \times V_g) + (BLP_j \times V_b)}{V_g + V_b}$$

where:

CP_j = calculated value for parameter j

BAP_j = baseline value for parameter j

BLP_j = value of parameter j for the blendstock or oxygenate

j = each parameter required by the complex model

(A) The baseline value shall be the refinery's "summer" or "winter" baseline, based on the "summer" or "winter" classification of the gasoline produced as determined under paragraphs (g)(5) or (g)(6) of this section. In the case of a refinery that is aggregated under paragraph (h) of this section, the refinery baseline shall be used, and not the aggregate baseline.

(B) The sulfur content and oxygen wt% computations under paragraph (g)(3)(iii) of this section shall be adjusted for the specific gravity of the gasoline and blendstock using specific gravities of 0.749 for "summer" gasoline and of 0.738 for "winter" gasoline.

(C) In the case of "summer" gasoline, where the blendstock is ethanol and

the volume fraction calculated under paragraph (g)(3)(ii) is equal to or greater than 0.015, the value for RVP calculated under paragraph (g)(3)(iii) of this section shall be 1.0 psi greater than the RVP of the gasoline with which the blendstock is blended.

(iv) Using the summer or winter complex model, as appropriate, calculate the exhaust toxics and NO_x emissions performance, in mg/mi, of:

(A) A hypothetical gasoline having properties equal to those calculated in paragraph (g)(3)(iii) of this section (HEP_j); and

(B) A gasoline having properties equal to the refinery's or importer's baseline (BEP).

(v) Calculate the exhaust toxics and NO_x equivalent emissions performance (EEP) of the blendstock, in mg/mi, using the following equation:

$$EEP_j = \frac{HEP_j - (BEP_j * (1 - F))}{F}$$

where:

EEP_j = equivalent emissions performance of the blendstock for emissions performance j

BEP_j = emissions performance j of a gasoline having the properties of the refinery's baseline

HEP_j = emissions performance j of a hypothetical blendstock/gasoline blend

F = blendstock volume fraction

j = exhaust toxics or NO_x emissions performance

(vi) For each blendstock batch, the volume, and exhaust toxics and NO_x equivalent emissions performance (EEP) shall be included in the refinery's compliance calculations.

(4) Compliance calculations under this subpart E shall be based on computations to the same degree of accuracy that are specified in establishing individual baselines under § 80.91.

(5) The emissions performance of gasoline that has an RVP that is equal to or less than the RVP required under § 80.27 ("summer gasoline") shall be determined using the applicable summer complex model under § 80.45.

(6) The emissions performance of gasoline that has an RVP greater than the RVP required under § 80.27 ("winter gasoline") shall be determined using the applicable winter complex model under § 80.45, using an RVP of 8.7 psi for

compliance calculation purposes under this subpart E.

(7)(i) For the 1998 averaging period any refiner or importer may elect to determine compliance with the requirement for exhaust NO_x emissions performance either with or without the inclusion of oxygenates in its compliance calculations, in accordance with § 80.91(e)(4), provided that the baseline exhaust NO_x emissions performance is calculated using the same with- or without-oxygen approach.

(ii)(A) Any refiner or importer must use the with- or without-oxygen approach elected under paragraph (g)(7)(i) of this section for all subsequent averaging periods; except that

(B) In the case of any refiner or importer who elects to determine compliance for the calendar year 1998 averaging period without the inclusion of oxygenates, such refiner or importer may elect to include oxygenates in its compliance calculations for the 1999 averaging period.

(iii) Any refiner or importer who elects to use the with-oxygen approach under paragraph (g)(7)(ii)(B) of this section must use this approach for all subsequent averaging periods.

(8) *Emissions performance of conventional gasoline with parameters outside the complex model valid range limits.* Notwithstanding the provisions of § 80.45(f)(2), in the case of any parameter value that does not fall within the complex model range limit in § 80.45(f)(1)(ii), the refiner or importer shall determine the emissions performance of the batch using the following parameter values:

Parameter outside the range limit	Parameter value to use for calculating	
	Exhaust toxics	NO _x
Sulfur	Test value ¹	Test value. ¹
RVP (summer only):		
< 6.4 psi	6.4 psi	6.4 psi.
> 11.0 psi	Test value ¹	Test value. ¹
Aromatics	Test value ¹	Test value. ¹
Olefins	Test value ¹	Test value. ¹
Benzene	Test value ¹	Test value. ¹
E200:		
< 30%	Test value ¹	30%
> 70%	70%	Test value. ¹
E300 < 70%	Test value ¹	Test value. ¹

¹ Test value is the value for a parameter determined pursuant to paragraph 80.101(i)(1)(i) of this section.

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(h) *Refinery grouping for determining compliance.* (1) Any refiner that operates more than one refinery may:

(i) Elect to achieve compliance individually for the refineries; or

(ii) Elect to achieve compliance on an aggregate basis for a group, or for groups, of refineries, some of which may be individual refineries; provided that

(iii) Compliance is achieved for each refinery separately or as part of a group; and

(iv) The data for any refinery is included only in one compliance calculation.

(2) Any election by a refiner to group refineries under paragraph (h)(1) of this section shall:

(i) Be made as part of the report for the 1995 averaging period required by § 80.105;

(ii) Apply for the 1995 averaging period and for each subsequent averaging period, and may not thereafter be changed; and

(iii) Apply for purposes of the blendstock tracking and accounting provisions under § 80.102.

(3)(i) Any standards under this section shall apply, and compliance calculations shall be made, separately for each refinery or refinery group; except that

(ii) Any refiner that produces conventional gasoline for distribution to a specified geographic area which is the subject of a petition approved by EPA pursuant to § 80.91(f)(3) shall achieve compliance separately for gasoline supplied to such specified geographic area.

(i) *Sampling and testing.* (1) Any refiner or importer shall for each batch of conventional gasoline, and other products if included in paragraph (d) of this section:

(i)(A) Determine the value of each of the properties required for determining compliance with the standards that are applicable to the refiner or importer, by collecting and analyzing a representative sample of gasoline or blendstock taken from the batch, using the methodologies specified in § 80.46; except that

(B) Any refiner that produces gasoline by combining blendstock with gasoline that has been included in the compliance calculations of another re-

finer or of an importer may for such gasoline meet this sampling and testing requirement by collecting and analyzing a representative sample of the blendstock used subsequent to each receipt of such blendstock if the compliance calculation method specified in paragraph (g)(3) of this section is used.

(ii) Assign a number to the batch (the "batch number"), as specified in § 80.65(d)(3);

(2) For the purposes of meeting the sampling and testing requirements under paragraph (i)(1) of this section, any refiner or importer may, prior to analysis, combine samples of gasoline collected from more than one batch of gasoline or blendstock ("composite sample"), and treat such composite sample as one batch of gasoline or blendstock provided that the refiner or importer:

(i) Meets each of the requirements specified in § 80.91(d)(4)(iii) for the samples contained in the composite sample;

(ii) Combines samples of gasoline that are produced or imported over a period no longer than one month;

(iii) Uses the total of the volumes of the batches of gasoline that comprise the composite sample, and the results of the analyses of the composite sample, for purposes of compliance calculations under paragraph (g) of this section; and

(iv) Does not combine summer and winter gasoline, as specified under paragraphs (g) (5) and (6) of this section, in a composite sample.

(j) *Evasion of standards through exporting and importing gasoline.* Notwithstanding the requirements of this section, no refiner or importer shall export gasoline and import the same or other gasoline for the purpose of evading a more stringent baseline requirement.

[59 FR 7860, Feb. 16, 1994, as amended at 59 FR 36968, July 20, 1994; 60 FR 40008, Aug. 4, 1995; 62 FR 9884, Mar. 4, 1997; 62 FR 68207, Dec. 31, 1997; 64 FR 30910, June 9, 1999; 64 FR 37689, July 13, 1999]

§ 80.102 Controls applicable to blendstocks.

(a) For the purposes of this subpart E: