

**§ 80.385**

**40 CFR Ch. I (7-1-00 Edition)**

gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be designated by the refiner or importer as exempt R&D gasoline.

(3) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in the distribution system of the gasoline.

(4) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(d) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which may include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section, including restoration of motor vehicle emissions control systems. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void ab initio.

(e) *Effects of exemption.* Gasoline that is subject to an R&D exemption under this section is exempt from other provisions of this subpart provided that the gasoline is used in a manner that complies with the memorandum of exemption granted under paragraph (d) of this section.

**VIOLATION PROVISIONS**

**§ 80.385 What acts are prohibited under the gasoline sulfur program?**

No person shall:

(a) *Averaging violation.* Produce or import gasoline that does not comply with the applicable sulfur average standard under § 80.195, § 80.216 or § 80.240.

(b) *Cap standard violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standard under § 80.195, § 80.216, § 80.210, § 80.220 or § 80.240.

(c) *Causing an averaging, cap standard, or geographic phase-in area (GPA) use violation.* Cause another person to commit an act in violation of paragraph (a), (b), or (f) of this section.

(d) *Causing violating gasoline to be in the distribution system.* Cause gasoline to be in the distribution system which does not comply with an applicable sulfur cap standard under § 80.195, § 80.210, § 80.216, § 80.220 or § 80.240; a sulfur average standard under § 80.195, § 80.216 or § 80.240; or a GPA use prohibition under § 80.219(c).

(e) *Denatured ethanol violation.* Blend into gasoline denatured ethanol with a sulfur content higher than 30 ppm.

(f) *GPA use violation.* Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with a GPA use prohibition under § 80.219(c).

**§ 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?**

(a) Compliance with the sulfur standards of this subpart shall be determined based on the sulfur level of the gasoline, measured using the methodologies specified in §§ 80.330(b) and 80.46(a). Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline if the evidence or information is relevant to whether the sulfur level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in §§ 80.330(b) and 80.46(a), business records, and commercial documents.

(b) Determinations of compliance with the requirements of this subpart other than the sulfur standards, and

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determinations of liability for any violation of this subpart, may be based on information obtained from any source or location. Such information may include, but is not limited to, business records and commercial documents.

### § 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.*—(1) *Averaging violation.* Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) *Causing an averaging violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(a), is liable for a violation of § 80.385(c).

(3) *Cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385 (b) occurred, is deemed in violation of § 80.385(b).

(4) *Causing a cap standard violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(b), is deemed in violation of § 80.385(c).

(5) *GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offer for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(f).

(6) *Causing a GPA use violation.* Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who causes another party to violate § 80.385(f), is deemed liable for a violation of § 80.385(c).

(7) *Branded refiner/importer liability.* Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate,

trade, or brand name appeared at a facility where a violation of § 80.385(b) or (f) occurred, is deemed in violation of § 80.385(b) or (f), as applicable.

(8) *Causing violating gasoline to be in the distribution system.* Any refiner, importer, distributor, reseller, carrier, or oxygenate blender, who owned, leased, operated, controlled or supervised a facility from which gasoline was released into the distribution system which does not comply with an applicable sulfur cap standard, a sulfur averaging standard, or a GPA use prohibition, is deemed in violation of § 80.385(d).

(9) *Carrier causation.* In order for a carrier to be liable under paragraph (a)(2), (4), (6), or (8) of this section, EPA must demonstrate, by reasonably specific showing by direct or circumstantial evidence, that the carrier caused the violation.

(10) *Denatured ethanol violation.* Any oxygenate blender who violates § 80.385(e) is liable for the violation.

(11) *Parent corporation liability.* Any parent corporation is liable for any violations of this subpart that are committed by any of its wholly-owned subsidiaries.

(12) *Joint venture liability.* Each partner to a joint venture is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or is committed by the joint venture operation.

(b) *Persons liable for failure to meet other provisions of this subpart.* (1) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who fails to meet a provision of this subpart not addressed in paragraph (a) of this section is liable for a violation of that provision.

(2) Any refiner, importer, distributor, reseller, carrier, wholesale purchaser-consumer, retailer, or oxygenate blender who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section, is liable for causing a violation of that provision.

### § 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395