

(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, except as provided in paragraphs (k) and (l) of this section.

(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<sub>x</sub> 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<sub>x</sub> 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.

(3)(i) The NO<sub>x</sub> emissions standard specified in paragraph (b)(3)(i) of this section shall no longer apply beginning January 1, 2007, except as provided in paragraph (c)(3)(ii) of this section.

(ii) For a refiner subject to the small refiner gasoline sulfur standards at § 80.240, the NO<sub>x</sub> emissions standard specified in paragraph (b)(3)(i) of this section shall no longer apply beginning January 1, 2008. For a refiner subject to the gasoline sulfur standards at § 80.240 that has received an extension of its small refiner gasoline sulfur standards under § 80.553, the NO<sub>x</sub> emissions standard specified in paragraph (b)(3)(i) of this section shall no longer apply beginning January 1, 2011.

(4)(i) Beginning January 1, 2011, or January 1, 2015 for small refiners approved under § 80.1340, the exhaust toxics emissions standard specified in paragraph (b)(3)(i) of this section shall apply only to conventional gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

(ii) The exhaust toxic emissions standard specified in paragraph (b)(3)(i) of this section shall not apply to conventional gasoline produced by a refinery approved under § 80.1334, pursuant to § 80.1334(c).

(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) [Reserved]

(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 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) [Reserved]

(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<sub>i</sub> = The compliance baseline value for parameter or emissions performance i.

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

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DB<sub>i</sub> = 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.

V<sub>1990</sub> = The 1990 baseline volume as determined under §80.91(f)(1).

V<sub>a</sub> = 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 averaging 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<sub>i</sub> = the compliance baseline value for emissions performance i

B<sub>i</sub> = 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<sub>i</sub> = 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<sub>i</sub> = annual anti-dumping statutory baseline value for emissions performance i under §80.91(c)(5)(iv)

DBS<sub>i</sub> = the summer statutory baseline value for emissions performance i under §80.45(b)(3), table 5

V<sub>a</sub> = 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

V<sub>1990</sub> = 1990 baseline volume under §80.91(f)(1)

V<sub>1990s</sub> = 1990 baseline volume of gasoline supplied to Puerto Rico and the U.S. Virgin Islands

V<sub>as</sub> = volume of conventional gasoline supplied during the averaging period to Puerto Rico and the U.S. Virgin Islands

i = exhaust toxics or NO<sub>x</sub> emissions performance

(g) *Compliance calculations*—(1)(i) *Simple model calculations*. In the case of any refiner or importer subject to an individual refinery baseline, the annual average value for each parameter or emissions performance during the aver-

aging 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<sub>i</sub> = the volume of conventional gasoline or other products included under paragraph (d) of this section, in batch i

PARM<sub>i</sub> = 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<sub>i</sub> = 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:

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

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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>x</sub> 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<sub>b</sub> = volume of blendstock

V<sub>g</sub> = 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<sub>j</sub> = calculated value for parameter j

BAP<sub>j</sub> = baseline value for parameter j

BLP<sub>j</sub> = 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<sub>x</sub> 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<sub>j</sub>); and

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

(v) Calculate the exhaust toxics and NO<sub>x</sub> 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<sub>j</sub> = equivalent emissions performance of the blendstock for emissions performance j

BEP<sub>j</sub> = emissions performance j of a gasoline having the properties of the refinery's baseline

HEP<sub>j</sub> = emissions performance j of a hypothetical blendstock/gasoline blend

F = blendstock volume fraction

j = exhaust toxics or NO<sub>x</sub> emissions performance

(vi) For each blendstock batch, the volume, and exhaust toxics and NO<sub>x</sub> 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 de-

termined 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<sub>x</sub> 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<sub>x</sub> 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 <sub>x</sub>
Sulfur .....	Test value <sup>1</sup> ....	Test value. <sup>1</sup>
RVP (summer only):		
< 6.4 psi .....	6.4 psi .....	6.4 psi.
> 11.0 psi .....	Test value <sup>1</sup> ....	Test value. <sup>1</sup>
Aromatics .....	Test value <sup>1</sup> ....	Test value. <sup>1</sup>
Olefins .....	Test value <sup>1</sup> ....	Test value. <sup>1</sup>
Benzene .....	Test value <sup>1</sup> ....	Test value. <sup>1</sup>

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Parameter outside the range limit	Parameter value to use for calculating	
	Exhaust toxics	NO <sub>x</sub>
E200:		
< 30% .....	Test value <sup>1</sup> ....	30%
> 70% .....	70% .....	Test value. <sup>1</sup>
E300 < 70% .....	Test value <sup>1</sup> ....	Test value. <sup>1</sup>

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

(9) *Exclusion of previously certified gasoline.* (i) Any refiner who uses previously certified reformulated or conventional gasoline or RBOB to produce conventional gasoline at a refinery, must exclude the previously certified gasoline for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

(ii) To accomplish the exclusion required in paragraph (g)(9)(i) of this section, the refiner must determine the volume and properties of the previously certified gasoline used at the refinery, and the volume and properties of gasoline produced at the refinery, and use the compliance calculation procedures in paragraphs (g)(9)(iii) and (g)(9)(iv) of this section.

(iii) For each batch of previously certified gasoline that is used to produce conventional gasoline the refiner must:

(A) Determine the volume and properties using the procedures in paragraph (i) of this section;

(B) Determine the exhaust toxics and NO<sub>x</sub> emissions performance using the summer or winter complex model as appropriate;

(C) Include the volume and emissions performance of the previously certified gasoline as a negative volume and a negative emissions performance in the refiner's compliance calculations for the refinery, or where applicable, the refiner's aggregation under paragraph (h) of this section, for exhaust toxics and NO<sub>x</sub>.

(iv) For each batch of conventional gasoline produced at the refinery using previously certified gasoline, the refiner must determine the volume and properties, and exhaust toxics and NO<sub>x</sub> emissions performance, and include each batch in the refinery's compliance calculations for exhaust toxics and NO<sub>x</sub> without regard to the presence of previously certified gasoline in the batch.

(v) The refiner must use any previously certified gasoline that the refiner includes as a negative batch in its compliance calculations for the refinery, or where appropriate, the refiner's aggregation, as a component in gasoline production during the annual averaging period in which the previously certified gasoline was included as a negative batch in the refiner's compliance calculations.

(vi) Notwithstanding the provisions of this paragraph (g)(9), the provisions of paragraph (g)(3) of this section may be used to calculate the exhaust toxics and NO<sub>x</sub> emissions performance of a blendstock added to conventional gasoline for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

(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; and

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

(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.

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(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 refiner 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.

(3) An importer who imports conventional gasoline into the United States by truck may meet the sampling and testing requirements under paragraph (i)(1) of this section as follows:

(i)(A) The importer must demonstrate that the imported gasoline meets the applicable conventional gasoline standards, through test results of samples of the gasoline contained in the storage tank from which the trucks used to transport gasoline into the United States are loaded.

(B) The frequency of this sampling and testing must be subsequent to each receipt of gasoline into the storage tank, or immediately prior to each transfer of gasoline to the importer's truck.

(C) The testing must be for each applicable parameter specified under § 80.65(e)(2)(i), using the test methods specified under § 80.46.

(D) The importer must obtain a copy of the terminal test results that reflects the quality of each truck load of gasoline that is imported into the United States.

(ii)(A) The importer must conduct separate programs of periodic quality assurance sampling and testing of the gasoline obtained from each truck-loading terminal, to ensure the accuracy of the terminal test results.

(B) The quality assurance samples must be obtained from the truck-loading terminal by the importer, and terminal operator may not know in advance when samples are to be collected.

(C) The importer must test each sample (or use a laboratory that is independent under § 80.82(b)(2) to test the sample) for the parameters specified under § 80.65(e)(2)(i) using the test methods specified under § 80.46, and the results must correlate with the terminal's test results within the ranges specified under § 80.65(e)(2)(i).

(D) The frequency of quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(iii) The requirements of paragraph (i)(3)(ii) of this section are satisfied if the sampling and testing required under paragraph (i)(3)(i) is conducted

by a laboratory that is an independent laboratory under the criteria of § 80.82(b)(2).

(iv) The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers under § 80.101(i), recordkeeping under § 80.104, and reporting under § 80.105.

(v) EPA inspectors or auditors, and auditors conducting attest engagements under subpart F, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(vi) In the event the requirements specified in paragraphs (i)(3)(i) through (v) of this section are not met, in whole or in part, the importer shall immediately lose the option of importing gasoline under the terms of this paragraph (i)(3).

(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.

(k) *Petitions for an alternative anti-dumping averaging period—(1) Eligibility for petition.* (i) The Administrator may grant an averaging period of two, three, four or five years upon petition of a refiner who:

(A) Activates or plans to activate conventional gasoline production at a refinery that has never produced gasoline subject to the anti-dumping requirements of subpart E of this part; and

(B) Faces substantial, demonstrated hardship in meeting the anti-dumping statutory baseline NO<sub>x</sub> standard during the early years of production.

(ii) The Administrator will consider the refiner's or refinery's compliance with all applicable Federal, state, and local environmental statutes or requirements in evaluating the petition, including, but not limited to, any ap-

plicable stationary source requirement or standards.

(2) *Contents of a petition.* A petition for a four or five year averaging period must be submitted by June 1, 2001. A petition for a two or three year averaging period must be submitted by June 1, 2003. Regardless of the averaging period requested, the petition must include:

(i) The business name and address of the affected refinery and any location(s) where the refiner conducts operations.

(ii) The name, address, phone number, fax number, and e-mail address of the responsible corporate officer and contact person who can provide clarification and explanation with regard to any information in the petition.

(iii) A detailed explanation of why the refinery is eligible for an alternative anti-dumping compliance period under paragraph (k)(1) of this section, including:

(A) Documentation the refinery has never produced gasoline that was subject to the anti-dumping standards under subpart E of this part and

(B) Documentation demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO<sub>x</sub> standard.

(iv) The length of the averaging period requested and a justification for why that length of averaging period is required.

(v) An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO<sub>x</sub>.

(vi) The refinery's estimated gasoline production and annual average NO<sub>x</sub> level for each of the years for which the alternative averaging period is requested.

(vii) A detailed description of the current refinery equipment and configuration.

(viii) A detailed description of changes to the refinery equipment the refiner intends to complete in order to begin producing gasoline that will allow the refinery to comply with the overall alternative averaging period NO<sub>x</sub> standard, and for such changes the intended dates for events the refiner believes are appropriate for demonstrating reasonable progress towards

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completion of the changes, including the following events:

- (A) Sign the design contract;
- (B) Obtain necessary permits;
- (C) Obtain construction financing commitments;
- (D) Begin construction.
- (E) Complete construction

(ix) The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).

(x) A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.

(xi) A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO<sub>x</sub> credits sufficient to offset the maximum projected NO<sub>x</sub> deficit as calculated in accordance with paragraph (k)(4)(ii) of this section on a quarterly basis.

(xii) A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.

(xiii) A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.

(xiv) Any other information the Administrator may require in order to fully evaluate the refiner's petition.

(xv) The signature of a responsible corporate officer, certifying that the information contained in the petition is true.

(3) *NO<sub>x</sub> standards and other requirements applicable to refineries operating under an alternative anti-dumping averaging period.* If a petition by a refiner is approved, the standards described in this paragraph shall be the standards applicable to the refinery identified in the petition for purposes of the anti-dumping program during the period of the alternative averaging period. Except as specifically modified by this section, the refinery must continue to comply with all other standards appli-

cable under the anti-dumping standards of subpart E of this part.

(i) A refinery shall meet the following deadlines for compliance with the statutory baseline, depending on the length of the alternative averaging period applicable to the refinery:

Length of compliance period in years	Compliance period must start no later than January 1st of	Refinery must comply with the Statutory Baseline NO <sub>x</sub> standard, on average, for gasoline produced beginning with the
2	2004	7th quarter and all subsequent quarters.
3	2003	10th quarter and all subsequent quarters.
4	2002	13th quarter and all subsequent quarters.
5	2001	16th quarter and all subsequent quarters.

(ii)(A) By the end of the applicable alternative averaging period, the refinery must generate a net NO<sub>x</sub> benefit (compared to the statutory baseline) that is at least twice as large as the total NO<sub>x</sub> deficit generated during the period of time during which the refiner produced gasoline that did not comply with the statutory baseline.

(B) At least one-half of the total NO<sub>x</sub> benefit required under paragraph (k)(3)(ii)(A) of this section must be generated by production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO<sub>x</sub> standard, as calculated on a quarterly basis in accordance with the provision of this paragraph (k)(3)(ii).

(C) Any portion of the total NO<sub>x</sub> benefit beyond that portion described under paragraph (k)(3)(ii)(B) of this section may come from either the production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO<sub>x</sub> standard, as calculated on a quarterly basis, or from the purchase and retirement of stationary source NO<sub>x</sub> credits or allowances, as provided in paragraph (k)(3)(iii) of this section.

(D) For the purposes of this §80.101(k) and §80.101(l), the NO<sub>x</sub> deficit in tons shall be calculated in accordance with the following equation:

$$NO_{xDef} = (NO_{xad} - NO_{xsea}) * G_d * 2.7 \times 10^{-8}$$

Where:

NO<sub>xDef</sub> = the NO<sub>x</sub> deficit, in tons, for a calendar quarter in which the refiner's NO<sub>x</sub>

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performance for that quarter exceeds  $NO_{Xsea}$ .

$NO_{Xad}$  = the average volume weighted  $NO_X$  emissions performance, in mg/mile, for a calendar quarter in which the refiner exceeds  $NO_{Xsea}$ .

$NO_{Xsea}$  = quarterly statutory  $NO_X$  performance values. First calendar quarter = 1540 mg/mile; Second calendar quarter = 1383 mg/mile; Third calendar quarter = 1381 mg/mile; Fourth calendar quarter = 1540 mg/mile.

$G_d$  = the volume of gasoline produced during a quarter in which the refiner exceeds the applicable  $NO_X$  standard, measured in gallons.

(E) For the purposes of this § 80.101(k) and § 80.101(l), the  $NO_X$  benefit in tons shall be calculated in accordance with the following equation:

$$NO_{XBen} (NO_{Xsea} - NO_{Xab}) * G_d * 2.7 \times 10^{-8}$$

Where:

$NO_{XBen}$  = the  $NO_X$  benefit, in tons, for a calendar quarter in which the refiner's  $NO_X$  performance for that quarter is below  $NO_{Xsea}$ .

$NO_{Xab}$  = the average volume weighted  $NO_X$  emissions performance, in mg/mile, for a calendar quarter in which the refiner is below  $NO_{Xsea}$ .

$NO_{Xsea}$  = quarterly statutory  $NO_X$  performance values. First calendar quarter = 1540 mg/mile; Second calendar quarter = 1383 mg/mile; Third calendar quarter = 1381 mg/mile; Fourth calendar quarter = 1540 mg/mile.

$G_b$  = the volume of gasoline produced during a quarter in which the refiner is below the applicable  $NO_X$  standard, measured in gallons.

(iii)  $NO_X$  Credits and Allowances. (A) Within 60 days of the end of each quarter for which the refinery produces gasoline for which there is a  $NO_X$  deficit, the refiner shall purchase stationary source  $NO_X$  credits or allowances that are equal to or greater than the amount of the  $NO_X$  deficit generated during the quarter, and provide written demonstration of such transaction to the Administrator. These  $NO_X$  credits or allowances are in addition to any  $NO_X$  credits or allowances purchased during any previous quarters.  $NO_X$  deficit is to be calculated on a quarterly basis in accordance with the equation in paragraph (k)(3)(ii)(D) of this section.

(B) No  $NO_X$  credits or allowances purchased by the refiner may contribute to the refinery's compliance with the

requirements of paragraphs (k)(3)(ii)(B) of this section.

(C) The refinery may sell  $NO_X$  credits or allowances purchased under this paragraph (k)(3)(iii) only in an amount equal to or less than any  $NO_X$  benefit that the refinery generates subsequently through the production of conventional gasoline at the refinery that is cleaner than the statutory baseline  $NO_X$  standard, as calculated on a quarterly basis. A refiner may retire credits or allowances purchased under this paragraph (k)(3)(iii) at any time.

(D) For purposes of satisfying a refinery's obligations under paragraphs (k)(3)(ii)(C), (k)(3)(iii)(A) or (l)(6)(ii) of this section, any  $NO_X$  credits or allowances that a refiner purchases must have been validly generated as part of a state stationary source program covered by an approved state implementation plan (SIP) and must be current and marketable  $NO_X$  credits or allowances. It shall be the refiner's responsibility to ensure that  $NO_X$  credits or allowances are valid, current and marketable.

(E) In order to be retired,  $NO_X$  allowances or credits must be retired by EPA or the administering state agency, as provided for in the applicable state implementation plan (SIP). It shall be the refiner's responsibility to ensure that  $NO_X$  credits or allowances are actually retired and that retirement is reflected in the records of EPA or the administering state agency.

(iv) (A) The refinery shall not generate marketable credits or allotments under the Tier 2 gasoline program provisions of Subpart H of this part during the entire alternative averaging period and shall provide a written statement, on a quarterly basis, certifying that the refinery has not generated, produced, sold, or transferred any such marketable credits or allotments under Subpart H of this part.

(B) If the final quarter of the alternative averaging period ends on a date other than December 31, then the refiner may generate credits for that portion of the year that was not subject to the alternative averaging period.

(v) The refinery shall market any conventional gasoline it produces that is subject to the requirements of § 80.27 as 9.0 RVP gasoline until the standard

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in paragraph (k)(3)(i) of this section is met.

(vi) A refinery that has been granted an averaging period under this section must submit the following reports to the Administrator within 30 days of the end of each calendar quarter:

(A) Quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter; and

(B)(I) Documents that demonstrate compliance with the requirements under paragraph (k)(3)(iii) and (k)(3)(iv) of this section, including a calculation of the NO<sub>x</sub> deficit or benefit for that quarter and a current total, based upon all quarters, indicating the current NO<sub>x</sub> deficit or NO<sub>x</sub> benefit balance for the refinery; and

(2) A statement of the number of NO<sub>x</sub> credits or allowances purchased, sold or retired during the quarter and a current total, based upon all quarters, indicating the current balance of NO<sub>x</sub> credits or allowances; and

(3) Any contractual documents, or other documents, evidencing the purchasing, banking or retiring of NO<sub>x</sub> credits or allowances.

(vii) The Administrator may specify, as part of the approved petition, deadlines by which a refiner is obligated to take certain actions (including those listed in paragraph (k)(2)(viii) of this section) demonstrating reasonable progress toward completion of the refinery changes necessary to produce gasoline that will allow the refinery to comply with the overall alternative averaging period NO<sub>x</sub> standard.

(viii)(A) The refiner shall submit reports demonstrating compliance with deadline requirements under paragraph (k)(3)(vii) of this section no later than 30 days after the applicable deadline occurs. Upon failure to meet a deadline requirement under paragraph (k)(3)(vii) of this section, the Administrator may accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO<sub>x</sub> standard under paragraph (k)(3)(i) or (l)(6)(i) of this section such that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that

standard. The acceleration of the requirement under paragraph (k)(3)(i) or (l)(6)(i) of this section, regarding compliance with the annual average statutory baseline NO<sub>x</sub> standard, does not affect the applicability of any other standard or requirement applicable to the refinery under this or any other section of the Act (*e.g.*, the refinery must still comply with the overall alternative averaging period NO<sub>x</sub> requirements in paragraph (k)(3)(ii) of this section).

(B) The reports required by this paragraph shall be on forms and following procedures specified by the Administrator of the EPA and signed and certified as correct by the owner or a responsible corporate officer of the refiner.

(ix) The refiner shall comply with any condition or requirement prescribed by the Administrator as part of the petition approval.

(x) The refinery must comply with all standards in this paragraph and with all applicable anti-dumping standards in Subpart E of this section, except the NO<sub>x</sub> standard.

(4) *Approval or disapproval of petitions.* The Administrator will approve or disapprove the petition within six months of receipt, in writing, and in the case of an approval will include any conditions or requirements to which the approval is subject.

(5) *Effective date for alternative averaging period.* (i) For an approved petition, the alternative averaging period shall become effective with the first day of the next calendar quarter, unless the first day of a later calendar quarter is requested.

(ii) If the final quarter of the alternative averaging period ends on a date other than December 31, then the refiner must demonstrate compliance with anti-dumping standards for gasoline produced during the remainder of that year and must demonstrate such compliance via the annual report as specified in § 80.105.

(6) *Refinery request for a change in alternative averaging period.* At any point during the pendency of an alternative conventional gasoline anti-dumping compliance period the Administrator

may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. In any such case:

(i) A refinery for which a change in the applicable alternative compliance period is approved shall thereafter operate as if the refinery had originally requested and received such alternative compliance period, and shall be subject to the standards and other requirements applicable under such alternative compliance period.

(ii) The Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject;

(iii) Accept as specifically modified by this section, such refinery must continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards; and

(iv) No application may result in an alternative compliance period that extends beyond January 1, 2006, except as provided in paragraph (l) of this section.

(7) *Violations under this paragraph (k).* Any person who fails to meet a standard or other requirement under this paragraph (k) shall be liable for penalties under § 80.5. Additionally, in the event that the refiner fails to achieve the required NO<sub>x</sub> benefit calculated under paragraph (k)(3)(ii) of this section, any NO<sub>x</sub> credits still banked under paragraph (k)(3)(iii) of this section shall be forfeit.

(l) *Special alternative anti-dumping averaging period provisions for small refineries—(1) Eligibility for petition.* A refiner who has been granted small refiner status under § 80.235 and who meets the eligibility requirements in paragraph (k)(1) of this section may petition for an alternative compliance period that is greater than five years and/or that extends beyond January 1, 2006, provided that such application is submitted by January 1, 2004. No application under this paragraph (l) may result in an alternative compliance pe-

riod that extends beyond January 1, 2008.

(2) *Application process.* Applications must be submitted to the Administrator by January 1, 2004, to the following address: U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), 1200 Pennsylvania Avenue, NW, Washington, DC 20460 (certified mail/return receipt) or U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), Transportation & Regional Programs Division, 501 3rd Street, NW, Washington, DC 20001 (express mail/return receipt).

(3) *Contents of the application petition.* Each petition must include:

(i) The information and signed statements specified for all petitioners under § 80.101(k)(2);

(ii) A description of the hardships that make it infeasible, on a cost and/or technological basis, for the refinery to comply with an alternative anti-dumping compliance baseline of five years or less, or that ends on or before January 1, 2006.

(iii) A quarterly timeline, from the date of the application, indicating the expected NO<sub>x</sub> emissions performance of the refinery's conventional gasoline, and the reasons for any expected non-compliance with the statutory baseline standard for NO<sub>x</sub> on a quarterly basis (for example, a particular gasoline blendstock-producing unit not yet installed). The timeline shall include the date by which the refinery will produce conventional gasoline that complies with the annual average statutory NO<sub>x</sub> baseline on a quarterly basis as determined according to § 80.101(k)(3)(ii).

(iv) A demonstration that the conditions for which the refinery was granted small refiner status under § 80.235 are still applicable.

(v) Information already submitted to the Administrator as part of a prior petition under paragraph (k) of this section, shall be updated if applicable.

(4) Approval or disapproval of petitions. The Administrator may approve a petition under this paragraph (l) if it includes information sufficient to demonstrate to the Administrator's satisfaction that cost and/or technological constraints make it infeasible for the refinery to comply with an alternative anti-dumping compliance baseline of

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five years or less, or that ends on or before January 1, 2006. The Administrator will approve or deny the petition in writing within six months of receipt. An approval will include any conditions or requirements to which the approval is subject.

(5) *Cessation of extended alternative compliance period.* (i) Refineries that qualify as small under §80.223, and that later are disqualified under §80.230(b), will be subject to the statutory anti-dumping baseline on an annual average basis beginning the calendar year immediately following the refinery's change in status.

(ii) If the Administrator finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from the Administrator, the refiner's extended alternative compliance period will be void ab initio.

(6) *Compliance requirements for qualifying small refiners.* (i) If the refiner's application for an extended compliance period under this paragraph (l) is approved, then the refinery must comply with the statutory baseline NO<sub>x</sub> standard, on average, for gasoline produced beginning by not later than the 19th quarter (for a six year compliance period) or by no later than the 22nd quarter (for a seven year compliance period).

(ii) The refinery must meet all other applicable requirements in paragraph (k) of this section, including the production of a net NO<sub>x</sub> benefit under paragraph (k)(3)(ii) of this section, except that the following provisions shall apply:

(A) For any cumulative NO<sub>x</sub> deficit remaining at the expiration of the fifth year, based on the NO<sub>x</sub> emission performance of gasoline actually produced at the refinery, and as calculated under paragraph (k)(3)(ii) of this section, the refiner shall provide an additional NO<sub>x</sub> benefit equal to one half ton of NO<sub>x</sub> emissions per ton of deficit remaining by the end of the refinery's alternative anti-dumping averaging period.

(B) For any cumulative NO<sub>x</sub> deficit remaining at the expiration of the sixth year, based on the NO<sub>x</sub> emission performance of gasoline actually produced at the refinery, and as calculated under paragraph (k)(3)(ii) of this sec-

tion, the refiner shall provide an additional NO<sub>x</sub> benefit equal to one ton of NO<sub>x</sub> emissions per ton of deficit remaining by the end of the refinery's alternative anti-dumping averaging period.

(C) The additional NO<sub>x</sub> benefits required under this paragraph (l)(6)(ii) of this section may come from the production of gasoline at the refinery that is cleaner than the statutory baseline or from the purchase and retirement of stationary source NO<sub>x</sub> credits or allowances as provided in paragraph (k)(3)(iii) of this section.

[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; 65 FR 54431, Sept. 8, 2000; 66 FR 67107, Dec. 28, 2001; 67 FR 8738, Feb. 26, 2002; 68 FR 24307, May 6, 2003; 70 FR 74572, Dec. 15, 2005; 72 FR 8543, Feb. 26, 2007]

### § 80.102 [Reserved]

### § 80.103 Registration of refiners and importers.

Any refiner or importer of conventional gasoline must register with the Administrator in accordance with the provisions specified at §80.76.

### § 80.104 Recordkeeping requirements.

Any parties in the gasoline distribution network shall maintain records containing the information as required by this section.

(a) For any refiner or importer, beginning in 1995, for each averaging period:

(1) Documents containing the information specified in paragraph (a)(2) of this section shall be obtained for:

(i) Each batch of conventional gasoline; and

(ii) Each batch of blendstock received in the case of any refiner that determines compliance on the basis of blendstocks properties under §80.101(g)(3).

(2)(i) The results of tests performed in accordance with §80.101(i);

(ii) The volume of the batch;

(iii) The batch number;

(iv) The date of production, importation or receipt;

(v) The designation regarding whether the batch is summer or winter gasoline;