

Environmental Protection Agency

§ 80.81

(f) Any violation of any affirmative requirement or prohibition not included in paragraph (c) or (d) of this section shall constitute a separate day of violation for each and every day such affirmative requirement is not properly accomplished, and/or for each and every day the prohibited activity continues. For those violations that may be ongoing under subparts D, E, and F of this part, each and every day the prohibited activity continues shall constitute a separate day of violation.

§ 80.81 Enforcement exemptions for California gasoline.

(a)(1) The requirements of subparts D, E, F, and J of this part are modified in accordance with the provisions contained in this section in the case of California gasoline.

(2) For purposes of this section, "California gasoline" means any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California and that:

(i) Is manufactured within the State of California;

(ii) Is imported into the State of California from outside the United States; or

(iii) Is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline for sale in any covered area outside the State of California.

(b)(1) Any refiner or importer of gasoline that is sold, intended for sale, or made available for sale as a motor fuel in the State of California is, with regard to such gasoline, exempt from the compliance survey provisions contained in § 80.68.

(2) Any refiner or importer of California gasoline is, with regard to such gasoline, exempt from the independent analysis requirements contained in § 80.65(f).

(3) Any refiner, importer, or oxygenate blender of California gasoline that elects to meet any benzene content, oxygen content, or toxics emission reduction standard specified in § 80.41 on average for any averaging period specified in § 80.67 that is in part before March 1, 1996, and in part subsequent to

such date, shall, with regard to such gasoline that is produced or imported prior to such date, demonstrate compliance with each of the standards specified in § 80.41 for each of the following averaging periods in lieu of those specified in § 80.67:

(i) January 1 through December 31, 1995; and

(ii) March 1, 1995, through February 29, 1996.

(4) The compliance demonstration required by paragraph (b)(3)(ii) of this section shall be submitted no later than May 31, 1996, along with the report for the first quarter of 1996 required to be submitted under § 80.75(a)(1)(i).

(c) Any refiner, importer, or oxygenate blender of California gasoline that is manufactured or imported subsequent to March 1, 1996 and that meets the requirements of the California Phase 2 or Phase 3 reformulated gasoline regulations, as set forth in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003), is with regard to such gasoline, exempt from the following requirements (in addition to the requirements specified in paragraph (b) of this section:

(1) The parameter value reconciliation requirements contained in § 80.65(e)(2);

(2) The designation of gasoline requirements contained in § 80.65(d), except in the case of RBOB that is designated as "any renewable oxygenate," "non-VOC controlled renewable ether only", or "renewable ether only";

(3) The reformulated gasoline and RBOB compliance requirements contained in § 80.65(c);

(4) [Reserved]

(5) The annual compliance audit requirements contained in § 80.65(h), except where such audits are required with regard to the renewable oxygenate requirements contained in § 80.83;

(6) The downstream oxygenate blending requirements contained in § 80.69, except where such requirements apply to the renewable oxygenate requirements contained in § 80.83;

(7) The record keeping requirements contained in §§ 80.74 and 80.104, except that records required to be maintained

§ 80.81

40 CFR Ch. I (7-1-07 Edition)

under Title 13, California Code of Regulations, section 2270, shall be maintained for a period of five years from the date of creation and shall be delivered to the Administrator or to the Administrator's authorized representative upon request;

(8) The reporting requirements contained in §§ 80.75 and 80.105;

(9) The product transfer documentation requirements contained in § 80.77; and

(10) The compliance attest engagement requirements contained in subpart F of this part, except where such requirements apply to the renewable oxygenate requirements contained in § 80.83.

(d) Any refiner or importer that produces or imports gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to March 1, 1996, shall demonstrate compliance with the standards specified in §§ 80.41 and 80.90 by excluding the volume and properties of such gasoline from all conventional gasoline and reformulated gasoline that it produces or imports that is not sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to such date. The exemption provided in this section does not exempt any refiner or importer from demonstrating compliance with such standards for all gasoline that it produces or imports.

(e)(1) The exemption provisions contained in paragraphs (b)(2), (b)(3), (c), and (f) of this section shall not apply under the circumstances set forth in paragraphs (e)(2) and (e)(3) of this section.

(2) [Reserved]

(3)(i) Such exemption provisions shall not apply to any refiner or importer of California gasoline who has been assessed a civil, criminal or administrative penalty for a violation of subpart D, E or F of this part or for a violation of the California Phase 2 reformulated gasoline regulations set forth in Title 13, California Code of Regulations, sections 2260 *et seq.*, effective 90 days after the date of final agency or district court adjudication of such penalty assessment.

(ii) Any refiner or importer subject to the provisions of paragraph (e)(3)(i) of this section may submit a petition to the Administrator for relief, in whole or in part, from the applicability of such provisions, for good cause. Good cause may include a showing that the violation for which a penalty was assessed was not a substantial violation of the Federal California reformulated gasoline regulations.

(f) In the case of any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to March 1, 1996, any person that manufactures, sells, offers for sale, dispenses, supplies, offers for supply, stores, transports, or causes the transportation of such gasoline is, with regard to such gasoline, exempt from the following prohibited activities provisions:

(1) The oxygenated fuels provisions contained in § 80.78(a)(1)(iii);

(2) The product transfer provisions contained in § 80.78(a)(1)(iv);

(3) The oxygenate blending provisions contained in § 80.78(a)(7); and

(4) The segregation of simple and complex model certified gasoline provision contained in § 80.78(a)(9).

(g)(1) Any refiner that operates a refinery located outside the State of California at which California gasoline is produced (as defined in paragraph (a)(2)(ii) or (iii) of this section) is produced shall, with regard to such gasoline, provide to any person to whom custody or title of such gasoline has transferred, and each transferee shall provide to any subsequent transferee, documents which include the following information:

(i) The name and address of the transferor;

(ii) The name and address of the transferee;

(iii) The volume of gasoline which is being transferred;

(iv) The location of the gasoline at the time of the transfer;

(v) The date and time of the transfer;

(vi) The identification of the gasoline as California gasoline.

(2) Each refiner and transferee of such gasoline shall maintain copies of the product transfer documents required to be provided by paragraph

(g)(1) of this section for a period of five years from the date of creation and shall deliver such documents to the Administrator or to the Administrator's authorized representative upon request.

(h)(1) For the purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1) and § 80.101(i)(1)(i)(A), any refiner or importer of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2260 *et seq.* (as amended July 2, 1996), in lieu of any applicable methodology specified in § 80.46, with regards to:

(i) Such gasoline; or

(ii) That portion of its gasoline produced or imported for use in other areas of the United States, provided that:

(A) The gasoline must be produced by a refinery that is located in the state of California that produces California gasoline, or imported into California from outside the United States as California gasoline;

(B) The gasoline must be classified as conventional gasoline upon exportation from the California; and

(C) The refiner or importer must correlate the results from the applicable sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003) with the method specified in § 80.46, and such correlation must be adequately demonstrated to EPA upon request.

(2) Notwithstanding the requirements of § 80.65(e)(1) regarding when the properties of a batch of reformulated gasoline must be determined, a refiner of California gasoline may determine the properties of gasoline as specified under § 80.65(e)(1) at off site tankage provided that:

(i) The samples are properly collected under the terms of a current and valid protocol agreement between the refiner and the California Air Resources Board with regard to sampling at the off site tankage and consistent with the requirements prescribed in Title 13, California Code of Regulations, section 2250 *et seq.* (May 1, 2003); and

(ii) The refiner provides a copy of the protocol agreement to EPA upon request.

[59 FR 7813, Feb. 16, 1994, as amended at 59 FR 36965, July 20, 1994; 59 FR 39289, Aug. 2, 1994; 59 FR 60715, Nov. 28, 1994; 63 FR 34825, June 26, 1998; 64 FR 49997, Sept. 15, 1999; 66 FR 17263, Mar. 29, 2001; 70 FR 75920, Dec. 21, 2005; 70 FR 74570, Dec. 15, 2005; 71 FR 8973, Feb. 22, 2006; 71 FR 26701, May 8, 2006]

EFFECTIVE DATE NOTE: At 59 FR 39289, Aug. 2, 1994, § 80.81 was amended by revising paragraphs (c)(2), (c)(5), (c)(6), and (c)(10) effective September 1, 1994. At 59 FR 60715, Nov. 28, 1994, the amendment was stayed effective September 13, 1994. At 70 FR 74570, Dec. 15, 2005, § 80.81 was amended by revising paragraphs (c)(2), (c)(5), (c)(6), and (c)(10); however, the amendment could not be incorporated because those paragraphs are stayed.

§ 80.82 Butane blending.

A refiner for any refinery that produces gasoline by blending butane with conventional gasoline or reformulated gasoline or RBOB may meet the sampling and testing requirements of subparts D and E of this part as follows:

(a) Any refinery that blends butane for which the refinery has documents from the butane supplier which demonstrate that the butane is commercial grade, as defined in paragraph (c) of this section, may demonstrate compliance with the standards in subparts D and E of this part based on the properties specified in paragraph (c) of this section, or the properties specified by the butane supplier.

(b)(1) Any refiner that blends butane for which the refiner has documents from the butane supplier which demonstrate that the butane is non-commercial grade, as defined in paragraph (d) of this section, may demonstrate compliance with the standards in subparts D and E of this part based on the properties specified in paragraph (d) of this section, or the properties specified by the butane supplier, provided that the refinery:

(i) Conducts a quality assurance program of sampling and testing the butane obtained from each separate butane supplier which demonstrates that the butane has the properties specified in paragraph (d) of this section; and

(ii) The frequency of sampling and testing for the butane received from