

## Environmental Protection Agency

## § 80.1030

### § 80.1010 [Reserved]

### § 80.1015 Who is liable for violations under the gasoline toxics program?

(a) *Persons liable for violations of prohibited acts*—(1) *Averaging violation*. Any person who violates § 80.1005(a) is liable for the violation.

(2) *Causing an averaging violation*. Any person who causes another party to violate § 80.1005(a), is liable for a violation of § 80.1005(b).

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

(b) *Persons liable for failure to meet other provisions of this subpart*. (1) Any person 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 person who causes another party 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.

### § 80.1020 [Reserved]

### § 80.1025 What penalties apply under this subpart?

(a) Any person liable for a violation under § 80.1015 is subject to civil penalties as specified in sections 205 and 211(d) of the Clean Air Act for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.1015(a) for a violation of the applicable toxics requirements or causing another party to violate the requirements during any averaging period, is subject to a separate day of violation for each and every day in the averaging period.

(c) Any person liable under § 80.1015(b) for failure to meet, or causing a failure to meet, a provision of this subpart is liable for a separate day of violation for each and every day such provision remains unfulfilled.

### PROVISIONS FOR FOREIGN REFINERS WITH INDIVIDUAL TOXICS BASELINES

### § 80.1030 What are the requirements for gasoline produced at foreign refineries having individual refiner toxics baselines?

(a) *Definitions*. (1) A *foreign refinery* is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as “the United States”).

(2) A *foreign refiner* is a person who meets the definition of refiner under § 80.2(i) for a foreign refinery.

(3) *Toxics-FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery toxics baseline under § 80.915 and that is imported into the U.S.

(4) *Non-Toxics-FRGAS* means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery toxics baseline, gasoline produced at a foreign refinery with an individual refinery toxics baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual toxics baseline during a year when the foreign refiner has opted to not participate in the Toxics-FRGAS program under paragraph (c)(3) of this section.

(5) *Certified Toxics-FRGAS* means Toxics-FRGAS the foreign refiner intends to include in the foreign refinery’s toxics compliance calculations under § 80.825, and does include in these compliance calculations when reported to EPA.

(6) *Non-Certified Toxics-FRGAS* means Toxics-FRGAS that is not Certified Toxics-FRGAS.

(b) *Baseline establishment*. Any foreign refiner may submit a petition to the Administrator for an individual refinery toxics baseline pursuant to § 80.915 for all gasoline that was produced at the foreign refinery and imported into the United States between January 1, 1998 and December 31, 2000.

(1) The refiner shall follow the procedures specified in §§ 80.91 through 80.93 to establish an anti-dumping baseline, if it does not already have such a baseline.

(2) In making determinations for foreign refinery baselines, EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such determinations.

(3)(i) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate toxics baseline, and the refiner fails to cure this defect after a request for more information, EPA will not assign an individual refinery toxics baseline.

(ii) If a foreign refiner does not already have an anti-dumping individual baseline per § 80.94, and if pursuant to § 80.94(b)(5) EPA does not assign an individual anti-dumping baseline, EPA will also not assign an individual refinery toxics baseline.

(c) *General requirements for foreign refiners with individual refinery toxics baselines.* A foreign refiner of a refinery that has been assigned an individual toxics baseline according to § 80.915 shall designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Toxics-FRGAS, the foreign refiner shall meet all provisions that apply to refiners under this subpart J.

(2) In the case of Non-Certified Toxics-FRGAS, the foreign refiner shall meet all the following provisions, except the foreign refiner shall use the name Non-Certified Toxics-FRGAS instead of the names “reformulated gasoline” or “RBOB” wherever they appear in the following provisions:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements under § 80.985.

(iii) The reporting requirements in § 80.990 and this section.

(iv) The product transfer document requirements in this section.

(v) The prohibitions in this section and § 80.1005.

(vi) The independent audit requirements under § 80.1035, paragraph (h) of this section, §§ 80.125 through 80.127, 80.128(a), (b), (c), (g) through (i), and 80.130.

(3)(i) Any foreign refiner that has been assigned an individual toxics baseline for a foreign refinery under § 80.915 may elect to classify no gasoline imported into the United States as Toxics-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section shall:

(A) Apply to an entire calendar year averaging period, and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election shall take effect at the beginning of the next calendar year.

(4) In the case of information required under this section which would duplicate information submitted in accordance with § 80.94, the refiner may indicate that such information is also submitted in accordance with the requirements of this section. Duplicate submissions are not required.

(d) *Designation, product transfer documents, and foreign refiner certification.*

(1) Any foreign refiner of a foreign refinery that has been assigned an individual toxics baseline shall designate each batch of Toxics-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Toxics-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Toxics-FRGAS prior to its being imported into the United States, it shall include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Toxics-FRGAS was produced.

(3) On each occasion when Toxics-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner

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shall prepare a written verification for each batch of the Toxics-FRGAS that meets the following requirements:

(i) The verification shall include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Toxics-FRGAS;

(B) The identification of the gasoline as Certified Toxics-FRGAS or Non-Certified Toxics-FRGAS;

(C) The volume of Toxics-FRGAS being transported, in gallons;

(D) In the case of Certified Toxics-FRGAS:

(1) The toxics value as determined under paragraph (f) of this section; and

(2) A declaration that the Toxics-FRGAS is being included in the compliance calculations under §80.825 for the refinery that produced the Toxics-FRGAS.

(ii) The verification shall be made part of the product transfer documents for the Toxics-FRGAS.

(e) *Transfers of Toxics-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Toxics-FRGAS is imported into the United States. A foreign refiner may remove the Toxics-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance calculations under §80.825; and

(B) In the case of Certified Toxics-FRGAS, the volume and toxics value of the gasoline from the compliance calculations under §80.825.

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the toxics value and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Toxics-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Toxics-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Toxics-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Toxics-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner shall have an independent third party:

(i) Collect a representative sample of the Certified Toxics-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for toxics using the methodology specified in §80.730 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Review original documents that reflect movement and storage of the Certified Toxics-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Toxics-FRGAS was produced; and

(B) That the Toxics-FRGAS remained segregated from:

(1) Non-Toxics-FRGAS and Non-Certified Toxics-FRGAS; and

(2) Other Certified Toxics-FRGAS produced at a different refinery.

(3) The independent third party shall submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report shall include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party shall:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(e)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Except as described in paragraph (g)(1)(ii) of this section, any foreign refiner and any United States importer of Certified Toxics-FRGAS shall compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the toxics value.

(ii) Where a vessel transporting Certified Toxics-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph (s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry

and at the load port differ by more than one percent; or

(B) The toxics value determined at the port of entry is higher than the toxics value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner shall treat the gasoline as Non-Certified Toxics-FRGAS, and the foreign refiner shall exclude the gasoline volume and properties from its gasoline toxics compliance calculations under § 80.825.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of Toxics-FRGAS as part of the applicable attest engagement for each foreign refinery under § 80.1035:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) shall include Non-Toxics-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Toxics-FRGAS, and of Non-Certified Toxics-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Toxics-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Toxics-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

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(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Toxics-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Toxics-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Toxics-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Toxics-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Toxics-FRGAS was mixed with any Non-Certified Toxics-FRGAS, Non-Toxics-FRGAS, or any Certified Toxics-FRGAS produced at a different refinery.

(5) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified and Non-Certified Toxics-FRGAS, in accordance with the guidelines in §80.127, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Toxics-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in §80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a ma-

rine vessel. Select a sample from this listing in accordance with the guidelines in §80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor shall:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§80.125 through 80.130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of §§80.125 through 80.130, §80.1035 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner shall commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery toxics baseline.

(1) Any United States Environmental Protection Agency inspector or auditor will be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access will be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Toxics-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits will be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and toxics value, and transfers of title or custody, of any gasoline or blendstocks, whether Toxics-FRGAS or Non-toxics-FRGAS, produced at the foreign refinery during the period January 1, 1998 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and toxics value of Toxics-FRGAS;

(C) The proper classification of gasoline as being Toxics-FRGAS or as not being Toxics-FRGAS, or as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS;

(D) Transfers of title or custody to Toxics-FRGAS;

(E) Sampling and testing of Toxics-FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.1035 including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner will be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents will be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters will be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia will be named, and service on this agent

constitutes service on and personal and subject matter jurisdiction in the United States over the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart J.

(3) A foreign refiner shall be subject to civil liability for violations of this section, sections 114, 202(1), 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7521(1), 7545 and 7601(a)), and all other applicable laws or regulations and shall be subject to the provisions thereof. The Administrator may assess a penalty against a foreign refiner for any violation of this section by a foreign refiner, in the manner set forth in sections 205(c) of the CAA, 42 U.S.C. 7524(c) or commence a civil action against a foreign refiner to assess and recover a civil penalty in the manner set forth in section 205(b) of the CAA, 42 U.S.C. 7524(b). A FR shall be subject to criminal liability for violations of this section, section 113(c)(2) of the CAA, 42 U.S.C. 7413(c)(2), 18 U.S.C. 1001 and all other applicable provisions and shall be subject to the provisions thereof.

(4) United States substantive and procedural laws shall apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery toxics baseline, producing and exporting gasoline under an individual refinery toxics baseline, and all other actions to comply with the requirements of this subpart J relating to the establishment and use of an individual refinery toxics baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart J, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, will not seek to detain or to impose civil or criminal remedies

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against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) shall be signed by the owner or president of the foreign refiner business.

(8) In any case where Toxics-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Toxics-FRGAS to the United States, the foreign refiner shall obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments shall be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery toxics baseline under this section, the foreign refiner, its agents and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart J, including conduct that violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner shall meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery toxics baseline.

(l) The foreign refiner shall annually post a bond of the amount calculated using the following equation:

$$\text{Bond} = G \times \$ 0.01 - \text{Bond}_{\text{CG}}$$

Where:

Bond = amount of the bond in U. S. dollars.  
G = the largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the five preceding calendar years.

$\text{Bond}_{\text{CG}}$  = amount of bond currently posted by the refinery pursuant to §80.94.

(2) Bonds shall be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases, the foreign refiner shall increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) shall:

(i) Be used to satisfy any judicial or administrative judgment, order, assessment or payment under a judicial or administrative settlement agreement that results from an administrative or judicial enforcement action for conduct in violation of this subpart J, including where such conduct violates Title 18 U.S.C. section 1001 and Clean Air Act section 113(c)(2);

(ii) Be provided by a corporate surety that is listed in the United States Department of Treasury Circular 570 "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds"; and

(iii) Include a commitment that the bond will remain in effect for at least five (5) years following the end of latest averaging period that the foreign refiner produces gasoline pursuant to the requirements of this subpart J.

(5) On any occasion a foreign refiner bond is used to satisfy any judgment or other obligation, the foreign refiner shall increase the bond to cover the amount used within 90 days of the date the bond is used.

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(6) The bond is used for payment of, not in lieu of, any obligation arising under any judgment, order, assessment or settlement agreement. Nothing herein is intended to waive any portion of any obligation except what portion is actually paid by use of funds from the bond.

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(m) *English language reports.* Any report or other document submitted to EPA by a foreign refiner shall be in English language, or shall include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Toxics-FRGAS with any Non-Certified Toxics-FRGAS or Non-Toxics-FRGAS, and no person may combine Certified Toxics-FRGAS with any Certified Toxics-FRGAS produced at a different refinery, until the importer has met all the requirements of paragraph (o) of this section, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer shall meet the following requirements:

(1) Each batch of imported gasoline shall be classified by the importer as being Toxics-FRGAS or as Non-Toxics-FRGAS, and each batch classified as Toxics-FRGAS shall be further classified as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS.

(2) Gasoline shall be classified as Certified Toxics-FRGAS or as Non-Certified Toxics-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Toxics-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Toxics-FRGAS, any United States importer shall perform the following procedures:

(i) In the case of both Certified and Non-Certified Toxics-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Toxics-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Toxics-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Toxics-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Toxics-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the toxics value using the methodologies specified in §80.730, by:

(1) The third party analyzing the sample; or

(2) The third party observing the importer analyze the sample.

(4) Any importer shall submit reports within thirty days following the date any vessel transporting Toxics-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer shall meet the requirements specified in §80.815 for any imported gasoline that is not classified as Certified Toxics-FRGAS under paragraph (o)(2) of this section.

(p) *Truck Imports of Certified Toxics-FRGAS produced at a Refinery* (1) Any refiner whose Certified Toxics-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the following requirements:

(i) Certification under paragraph (d)(5) of this section;

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(ii) Load port and port of entry sampling and testing under paragraphs (f) and (g) of this section;

(iii) Attest under paragraph (h) of this section; and

(iv) Importer testing under paragraph (o)(3) of this section.

(2) These alternative procedures shall ensure Certified Toxics-FRGAS remains segregated from Non-Certified Toxics-FRGAS and from Non-Toxics-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(i) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Toxics-FRGAS from that refinery from all other gasoline;

(ii) Contracts with any terminals and/or pipelines that receive and/or transport Certified Toxics-FRGAS, that prohibit the commingling of Certified Toxics-FRGAS with any of the following:

(A) Other Certified Toxics-FRGAS from other refineries.

(B) All Non-Certified Toxics-FRGAS.

(C) All Non-Toxics-FRGAS;

(iii) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Toxics-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States;

(iv) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Toxics-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(3) The petition required by this section shall be submitted to EPA along with the application for small refiner status and individual refinery toxics baseline and standards under § 80.240 and this section.

(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 this subpart J; 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 gasoline toxics requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.915, any alternative procedures under paragraph (r) of this section, any report or other submission required by

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paragraph (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) 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 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] 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, subpart J, 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 the provisions of 40 CFR Part 80, subpart J, including 40 CFR 80.1030 [insert name of foreign refiner]. 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.

**ATTEST ENGAGEMENTS**

**§ 80.1035 What are the attest engagement requirements for gasoline toxics compliance applicable to refiners and importers?**

In addition to the requirements for attest engagements that apply to refiners and importers under §§ 80.125 through 80.130, and § 80.1030, the attest engagements for refiners and importers applicable to this subpart J shall include the following procedures and requirements each year, which should be applied separately to reformulated gasoline (and RBOB, combined) and conventional gasoline:

(a) Obtain the EPA toxics baseline approval letter for the refinery to determine the refinery’s applicable baseline toxics value and baseline toxics volume under § 80.915.

(b) Obtain a written representation from the company representative stating the toxics value(s) that the company used as its baseline(s) and agree that number to paragraph (a) of this section.

(c) Obtain and read a copy of the refinery’s or importer’s annual toxics reports per §§ 1A80.75(e) and 80.105 filed with EPA for the year to determine the compliance baseline and incremental volume.

(d) Agree the yearly volume of gasoline reported to EPA in the toxics reports with the inventory reconciliation analysis under § 80.128.

(e) Calculate the annual average toxics value level for each type of gasoline specified at § 80.815(b) and agree the applicable values with the values reported to EPA.

(f) Calculate the difference between the yearly volume of gasoline reported to EPA and the baseline volume, if applicable, to determine the yearly incremental volume and agree that value with the value reported to EPA.

(g) Calculate the compliance baseline per § 80.850, and agree that value with the value reported to EPA.

(h) Beginning January 1, 2011, or January 1, 2015 for small refiners approved per § 80.1340, the requirements of this section shall apply only to gasoline that is not subject to the benzene standard of § 80.1230, pursuant to the provisions of § 80.1235.

[66 FR 17263, Mar. 29, 2001, as amended at 72 FR 8544, Feb. 26, 2007]

**§ 80.1040 [Reserved]**

**ADDITIONAL RULEMAKING**

**§ 80.1045 What additional rulemaking will EPA conduct?**

No later than July 1, 2003, the Administrator shall propose any requirements to control hazardous air pollutants from motor vehicles and motor vehicle fuels that the Administrator determines are appropriate pursuant to section 202(1)(2) of the Act. The Administrator will take final action on such proposal no later than July 1, 2004. During this rulemaking, EPA also intends to evaluate emissions and potential strategies relating to hazardous air