

described in paragraph (b) of this section; and

(iii) The technical qualifications and experience of each person involved in the baseline audit, including a showing that the requirements described in paragraph (c) of this section are met.

(e) *Refiner and importer responsibility.* (1) Each refiner and importer required to have its baseline verified by an auditor (per paragraph (a)(1) of this section) is responsible for utilizing an auditor for baseline verification which meets the requirements specified in paragraphs (b) and (c) of this section.

(2) A refiner's or importer's baseline submission will not be accepted until it has been verified using an auditor which meets the requirements specified in paragraphs (b) and (c) of this section.

(f) *Auditor responsibilities.* (1) The auditor must verify that all baseline submission requirements are fulfilled. This includes, but is not limited to, the following:

(i) Verifying that all data is correctly accounted for;

(ii) Verifying that all calculations are performed correctly;

(iii) Verifying that all adjustments to the data and/or calculations to account for post-1990 data, work-in-progress, and/or extenuating or other circumstances, as allowed per § 80.91, are valid and performed correctly.

(2) The primary analyst shall prepare and sign a statement, to be included in the baseline submission of the refiner or importer, stating that:

(i) He/she has thoroughly reviewed the sampling methodology and baseline calculations; and

(ii) To the best of his/her knowledge, the requirements and intentions of the rulemaking are met in the baseline determination; and

(iii) He/she agrees with the final baseline parameter, volume and emission values listed in the baseline submission.

(3) The auditor may be subject to debarment under U.S.C. 1001 if it displays gross incompetency, intentionally commits an error in the verification process or misrepresents itself or information in the baseline verification.

[59 FR 7860, Feb. 16, 1994, as amended at 67 FR 8737, Feb. 26, 2002]

§ 80.93 Individual baseline submission and approval.

(a) *Submission timing.* (1) Each refiner, blender or importer shall submit two copies of its individual baseline to EPA (Fuel Studies and Standards Branch, Baseline Submission, U.S. EPA, 2565 Plymouth Rd., Ann Arbor, MI 48105) not later than June 1, 1994.

(2) If a refiner must collect data after December 15, 1993 (per § 80.91(d)(2)), it shall submit two copies of its individual baseline to EPA (per § 80.93(a)(1)) by September 1, 1994.

(3)(i) All petitions required for baseline adjustments or methodology deviations will be approved or disapproved by the Director of the Office of Mobile Sources, or designee. All instances where a "showing" or other proof is required are also subject to approval by the Director of the Office of Mobile Sources, or designee.

(ii) Petitions, "showings," and other associated proof may be submitted to EPA prior to submittal of the individual baseline (per paragraphs (a)(1) and (a)(2) of this section). EPA will attempt to review and approve, disapprove or otherwise comment on the petition, etc., prior to the deadline for baseline submittal.

(iii) In the event that EPA does not comment on the petition prior to the deadline for baseline submittal, the refiner or importer must still comply with the applicable baseline submittal deadline.

(iv) Petitions submitted prior to the deadline for baseline submittals shall be submitted to the EPA at the following address: Fuels Studies and Standards Branch, Baseline Petition, U.S. EPA, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

(4) If a baseline recalculation is required per § 80.91(f), documentation and recalculation of all affected baselines shall be submitted to EPA within 30 days of the previous baseline(s) becoming inaccurate due to the circumstances outlined in § 80.91(f).

(b) *Submission content.* (1) Individual baseline submissions shall include, at minimum, the information specified in this paragraph (b).

(i) During its review and evaluation of the baseline submission, EPA may require a refiner or importer to submit

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additional information in support of the baseline determination.

(ii) Additional information which may assist EPA during its review and evaluation of the baseline may be included at the submitter's discretion.

(2) Administrative information shall include:

(i) Name and business address of the refiner or importer;

(ii) Name, business address and business phone number of the company contact;

(iii) Address and physical location of each refinery, terminal or import facility;

(iv) Address and physical location where documents which are supportive of the baseline determination for each facility are kept;

(3) The chief executive officer statement shall be:

(i) A statement signed by the chief executive officer of the company, or designee, which states that:

(A) The company is complying with the requirements as a refiner, blender or importer, as appropriate;

(B) The data used in the baseline determination is the extent of the data available for the determination of all required baseline fuel parameters;

(C) All calculations and procedures followed per §§ 80.90 through 80.93 have been done correctly;

(D) Proper adjustments have been made to the data or in the calculations, as applicable;

(E) The requirements and intentions of the rulemaking have been met in determining the baseline fuel parameters; and

(F) The baseline fuel parameter values determined for each facility represent that facility's 1990 gasoline to the fullest extent possible.

(ii) A refiner or importer which is permitted to utilize the parameter values specified in § 80.91(c)(5), and does so, shall submit a statement signed by the chief executive officer of the company, or designee, indicating that insufficient data exist for a baseline determination by the types of data allowed for that entity, as specified in § 80.91.

(4) The auditor-related requirements are:

(i) Name, address, telephone number and date of hire of each auditor hired

for baseline verification, whether or not the auditor was retained through the baseline approval process.

(ii) Identification of the auditor responsible for the verification. A copy of this auditor's qualification statement, per § 80.92, must be included if the auditor has not been approved by EPA, per § 80.92;

(iii) Indication of the primary analyst(s) involved in each refinery's baseline verification; and

(iv) The signed auditor verification statement, per § 80.92.

(5) The following baseline information for each refinery, refiner or importer, as applicable, shall be provided:

(i) Individual baseline fuel parameter values, on an oxygenated and non-oxygenated basis, and on a summer and winter basis, per § 80.91;

(ii) Individual baseline exhaust emissions shall be shown separately, on a summer, winter and annual average basis (per § 80.90) as follows:

(A) Simple model exhaust benzene emissions;

(B) Complex model exhaust benzene emissions;

(C) Complex model exhaust toxics emissions, for Phase I;

(D) Complex model exhaust NO_x emissions, for Phase I, using oxygenated individual baseline fuel parameters;

(E) Complex model exhaust NO_x emissions, for Phase I, using non-oxygenated individual baseline fuel parameters;

(F) Complex model exhaust toxics emissions, for Phase II;

(G) Complex model exhaust NO_x emissions, for Phase II, using oxygenated individual baseline fuel parameters; and

(H) Complex model exhaust NO_x emissions, for Phase II, using non-oxygenated individual baseline fuel parameters;

(iii) Individual 1990 baseline gasoline volumes, per § 80.91, shall be shown separately on a summer, winter and annual average basis; and

(iv) Blendstock-to-gasoline ratios for each calendar year 1990 through to 1993, per § 80.102.

(6) *Confidential business information.*

(i) Upon approval of an individual baseline, EPA will publish the individual

annualized baseline exhaust emissions, on an annual average basis, specified in paragraph (b)(5)(ii) of this section. Such individual baseline exhaust emissions shall not be considered confidential. In addition, the reporting information required under §§ 80.75(b)(2)(ii) (D), (G) and (J), and 80.105(a)(4)(i) (E), (H) and (K) shall not be considered confidential.

(ii) Information in the baseline submission which the submitter desires to be considered confidential business information (per 40 CFR part 2, subpart B) must be clearly identified. If no claim of confidentiality accompanies a submission when it is received by EPA, the information may be made available to the public without further notice to the submitter pursuant to the provisions of 40 CFR part 2, subpart B.

(7) Information related to baseline determination as specified in § 80.91 and paragraph (c) of this section.

(c) *Additional baseline submission requirements when Method 1-, 2- and/or 3-type data is utilized.* All requirements of this paragraph shall be reported separately for each facility, unless the facilities are closely integrated, per § 80.91.

(1) *General.* The following information shall be provided:

(i) The number of months in 1990 during which the facility was operating;

(ii) 1990 summer gasoline production volume, per § 80.91, total and by grade, for all gasoline produced but not exported;

(iii) 1990 winter gasoline production volume, per § 80.91, total and by grade, for all gasoline produced, excluding gasoline exported; and

(iv) Whether this facility is actually two facilities which are closely integrated, per § 80.91.

(2) *Baseline values.* The following shall be included for each fuel parameter for which a baseline value is required, per § 80.91:

(i) Narrative of the development of the baseline value of the fuel parameter, including discussion of the sampling and calculation methodologies, technical judgment used, effects of petition results on calculated values, and any additional information which may assist EPA in its review of the baseline;

(ii) Identification of the data-type(s), per § 80.91, used in the determination of a given fuel parameter;

(iii) Identification of test method. If not per § 80.46, include a narrative, explain differences and describing adequacy, per § 80.91;

(iv) Documentation that the minimum sampling requirements per § 80.91 have been met;

(v) Petition and narrative, if needed, for use of less than the minimum required data, per § 80.91;

(vi) Identification of instances of sample compositing per § 80.91;

(vii) Identification of streams for which one or more parameter values were deemed negligible per § 80.91; and

(viii) Discussion of the calculation of oxygenated or non-oxygenated fuel parameter values from non-oxygenated or oxygenated values, respectively, per § 80.91.

(3) *Method 1.* If Method 1-type data is utilized in the baseline determination, the following information on 1990 batches of gasoline, or shipments if not batch blended, are required by grade shall be provided:

(i) First and last sampling dates;

(ii) The following shall be indicated separately on a summer and winter basis, by month:

(A) Number of months sampled;

(B) Number of 1990 batches, or shipments if not batch blended;

(C) Total volume of all batches or shipments;

(D) Number of batches or shipments sampled;

(E) Total volume of all batches or shipments sampled;

(F) Baseline fuel parameter value, per § 80.91; and

(iii) A showing that data was available on every batch of 1990 gasoline, if applicable, per § 80.91 (b)(3) or (b)(4).

(4) *Method 2.* If Method 2-type data is utilized in the baseline determination, the following information on each type of 1990 blendstock used in the refinery's gasoline are required, by blendstock type shall be provided:

(i) First and last sampling dates; and

(ii) The following shall be indicated separately on a summer and winter basis, by month:

(A) Number of months sampled;

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(B) Each type of blendstock used in 1990 gasoline and total number of blendstocks. Include all blendstocks produced, purchased or otherwise received which were blended to produce gasoline within the facility. Identify all blendstocks not produced in the facility but used in the facility's 1990 gasoline;

(C) Total volume of each blendstock used in gasoline in 1990;

(D) Identification of blendstock streams as batch or continuous;

(E) Number of blendstock samples from continuous blendstock streams;

(F) Number of blendstock samples from batch processes, including volume of each batch sampled; and

(G) Baseline fuel parameter value, per § 80.91.

(5) *Method 3, blendstock data.* The following information on each type of post-1990 gasoline blendstock used in the refinery's gasoline are required, by blendstock type shall be provided:

(i) First and last sampling dates;

(ii) The following shall be indicated separately on a summer and winter basis, by month:

(A) Number of post-1990 months sampled;

(B) Each type of blendstock used in 1990 gasoline and total number of blendstocks. Include all blendstocks produced, purchased or otherwise received which were blended to produce gasoline within the facility. Identify all blendstocks not produced in the facility but used in the facility's 1990 gasoline;

(C) Total volume of each blendstock used in gasoline in 1990;

(D) Identification of post-1990 blendstock streams as batch or continuous;

(E) Number of post-1990 blendstock samples from continuous blendstock streams;

(F) Number of post-1990 blendstock samples from batch processes, including volume of each batch sampled; and

(G) Baseline fuel parameter value, per § 80.91; and

(iii) Support documentation showing that the criteria of § 80.91 for using Method 3-type blendstock data are met.

(6) *Method 3, post-1990 gasoline data.* The following information on post-1990

batches of gasoline, or shipments if not batch blended, are required by grade:

(i) First and last sampling dates;

(ii) The following shall be indicated separately for summer and winter production, by month:

(A) Number of post-1990 months sampled;

(B) Number of post-1990 batches, or shipments if not batch blended;

(C) Total volume of all post-1990 batches or shipments;

(D) Number of post-1990 batches or shipments sampled;

(E) Volume of each post-1990 batch or shipment sampled; and

(F) Baseline fuel parameter value, per § 80.91; and

(iii) Support documentation showing that the criteria of § 80.91 for using post-1990 gasoline data are met.

(7) *Work-in-progress (WIP).* All of the following must be included in support of a WIP adjustment (per § 80.91(e)(5)):

(i) Petition including identification of the specific baseline emission(s) or parameter for which the WIP adjustment is desired;

(ii) Showing that all WIP criteria, per § 80.91(e)(5), are met;

(iii) Unadjusted and adjusted baseline fuel parameters, emissions and volume for the facility; and

(iv) Narrative, per § 80.91 (e)(5).

(8) *Extenuating circumstances.* All of the following must be included in support of an extenuating circumstance adjustment (per § 80.91 (e)(6) through (e)(7)):

(i) Petition including identification of the allowable circumstance, per § 80.91 (e)(6) through (e)(7);

(ii) Showing that all applicable criteria, per § 80.91 (e)(6) through (e)(7), are met;

(iii) Unadjusted and adjusted baseline fuel parameters, emissions and volume for the facility; and

(iv) Narrative, per § 80.91.

(9) *Other baseline information.* Narrative discussing any aspects of the baseline determination not already indicated per the requirements of paragraph (c)(8) of this section shall be provided.

(10) *Refinery information.* The following information, on a summer or winter basis, shall be provided:

(i) Refinery block flow diagram, showing principal refining units;

(ii) Principal refining unit charge rates and capacities;

(iii) Crude types utilized (names, gravities, and sulfur content) and crude charge rates; and

(iv) Information on the following units, if utilized in the refinery:

(A) Catalytic Cracking Unit: conversion, unit yields, gasoline fuel parameter values (per § 80.91(a)(2));

(B) Hydrocracking Unit: unit yields, gasoline fuel parameter values (per § 80.91(a)(2));

(C) Catalytic Reformer: unit yields, severities;

(D) Bottoms Processing Units (including, but not limited to, coking, extraction and hydrogen processing): gasoline stream yields;

(E) Yield structures for other principal units in the refinery (including but not limited to Alkylation, Polymerization, Isomerization, Etherification, Steam Cracking).

(d) *Requirements for a petition applicable to gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.*

(1)(i) Any refiner for any refinery or importer with gasoline produced or imported for use in Alaska in its individual 1990 baseline may petition EPA to establish a separate 1990 baseline for gasoline produced or imported for use in Alaska using the winter Complex Model, and to use the winter statutory baseline values under § 80.91(c)(5) for any gasoline produced or imported for use in Alaska which is in excess of the refinery's or importer's 1990 volume of gasoline produced or imported for use in Alaska for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(4).

(ii) Any refiner for any refinery or importer with an individual 1990 baseline which did not include any gasoline produced or imported for use in Alaska in 1990 may petition EPA to establish the refinery's or importer's winter baseline values as the compliance baseline under § 80.101(f)(3) for gasoline which the refiner or importer produces or imports for use in Alaska.

(iii) Any refiner for any refinery or importer subject only to the anti-dumping statutory baseline under

§ 80.91(c)(5) may petition EPA to have the winter statutory baseline values under § 80.91(c)(5) apply instead for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(2) for gasoline which the refiner or importer produces or imports for use in Alaska.

(2)(i) Any refiner for any refinery or importer with gasoline produced or imported for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands in its individual 1990 baseline may petition EPA to establish a separate 1990 baseline for gasoline produced or imported for use in these areas using the summer Complex Model, and to use the summer statutory baseline values under § 80.91(c)(5) for any gasoline produced or imported for use in these areas in excess of the refinery's or importer's 1990 volume of gasoline produced or imported for use in these areas, for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(4).

(ii) Any refiner for any refinery or importer with an individual 1990 baseline which did not include any gasoline produced or imported for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands in 1990 may petition EPA to establish the refinery's or importer's summer baseline values as the compliance baseline under § 80.101(f)(3) for gasoline which the refiner or importer produces or imports for use in these areas.

(iii) Any refiner or importer subject only to the anti-dumping statutory baseline under § 80.91(c)(5) may petition EPA to have the summer statutory baseline values under § 80.91(c)(5) apply instead for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(2) for gasoline which the refiner or importer produces or imports for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands.

(iv) Any petition submitted in accordance with paragraphs (d)(2)(i), (d)(2)(ii) or (d)(2)(iii) of this section shall apply to gasoline produced or imported for use in all of the areas specified in the operative paragraphs.

(3) A petition under paragraphs (d)(1) or (d)(2) of this section must include the following:

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(i) Identification of the refiner and refinery or importer;

(ii) EPA company and facility registration numbers issued under § 80.76;

(iii) Identification of a contact person; and

(iv) For petitions submitted under paragraphs (d)(1)(i) and (d)(2)(i) of this section:

(A) Revised 1990 individual baseline determination wherein the baseline for gasoline produced or imported for use in Alaska has been evaluated using the winter Complex Model, or gasoline produced or imported for use in Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands has been evaluated using the summer Complex Model, as applicable, with the calculations clearly and fully described and displayed; and

(B) Revised 1990 individual baseline determination for gasoline in the refinery's or importer's original individual 1990 baseline which was not produced or imported for use in Alaska, and/or Hawaii, and/or the Commonwealth of Puerto Rico, and/or the Virgin Islands, as applicable, with the calculations clearly and fully described and displayed.

(C) Baseline auditor agreement with the revised baseline values.

(4) For U.S. Postal delivery, the petition shall be sent to: Attn: RFG Program, Mailstop 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. For commercial delivery: Attn: RFG Program, 6th Floor (202-343-9038), U.S. Environmental Protection Agency, 1310 L St., NW., Washington, DC 20005.

(5) EPA reserves the right to request additional information. If such information is not forthcoming in a timely manner, the petition will not be approved.

(6) A petition under this section may be submitted at any time during the annual averaging period. The baseline and compliance methods approved in a petition submitted under paragraph (d) of this section shall apply beginning with the annual averaging period in which the petition was approved and shall continue to apply in each annual averaging period thereafter. Once a petition has been approved under this

section, the refiner or importer may not revert back to its original baseline.

(7) A refiner for any refinery or importer with an approved petition under paragraph (d)(1) of this section and an approved petition under paragraph (d)(2) of this section will be subject to a separate baseline and baseline volume for its gasoline produced or imported for use in Alaska, and a separate baseline and baseline volume for its gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands.

(8)(i) Any refiner for any refinery or importer must have an approved petition under paragraph (d)(1) of this section in order to use the seasonal baseline and seasonal Complex Model, as provided in paragraph (d)(1) of this section, for gasoline produced or imported for use in Alaska.

(ii) Any refiner for any refinery or importer must have an approved petition under paragraph (d)(2) of this section in order to use the seasonal baseline and seasonal Complex Model, as provided in paragraph (d)(2) of this section, for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

(iii) Any new refiner or importer without an individual anti-dumping baseline shall be subject to the annual average anti-dumping statutory baseline under § 80.91(c)(5) unless the refiner or importer petitions for and receives approval of use of a seasonal baseline and seasonal Complex Model under this section.

(9)(i) The provisions of this paragraph (d) shall apply to any refiner, for any refinery, or importer that received approval of a petition under this paragraph (d) prior to November 26, 2007 beginning with the 2008 annual averaging period.

(ii) Any refiner, for any refinery, or importer that received approval of a petition under paragraph (d) of this section prior to November 26, 2007 may petition EPA to withdraw such approval. Such petition must be submitted to EPA by December 31, 2007. A withdrawal of approval under this paragraph is effective beginning with the 2008 annual averaging period and shall remain in effect in each annual averaging period thereafter.

(iii) A refiner or importer with an approved withdrawal under paragraph (d)(9)(i) of this section will be subject to the baseline which was in effect prior to the effective date of the refiner's or importer's approved petition under this paragraph (d). Once a refiner or importer receives approval of a withdrawal of a petition under paragraph (d)(9)(i) of this section the refiner or importer is ineligible to receive approval of a change in baseline under this section.

[59 FR 7860, Feb. 16, 1994, as amended at 59 FR 36968, July 20, 1994; 60 FR 65575, Dec. 20, 1995; 64 FR 30910, June 9, 1999; 72 FR 60579, Oct. 25, 2007]

§ 80.94 Requirements for gasoline produced at foreign refineries.

(a) *Definitions.* (1) A *foreign refinery* is a refinery that is located outside the United States, including 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 foreign refinery.

(3) *FRGAS* means gasoline produced at a foreign refinery that has been assigned an individual refinery baseline and that is imported into the United States.

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

(5) *Certified FRGAS* means FRGAS the foreign refiner intends to include in the foreign refinery's NO_x and exhaust toxics compliance calculations under § 80.101(g), and does include in these compliance calculations when reported to EPA.

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

(b) *Baseline establishment.* Any foreign refiner may submit to EPA a petition

for an individual refinery baseline, under §§ 80.90 through 80.93.

(1) The provisions for baselines as specified in §§ 80.90 through 80.93 shall apply to a foreign refinery, except where provided otherwise in this section.

(2) The baseline for a foreign refinery shall reflect only the volume and properties of gasoline produced in 1990 that was imported into the United States.

(3) A baseline petition shall establish the volume of conventional gasoline produced at a foreign refinery and imported into the United States during the calendar year immediately preceding the year the baseline petition is submitted.

(4) 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 a determination.

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

(6) Baseline petitions under this paragraph (b) of this section must be submitted before January 1, 2002.

(c) *General requirements for foreign refiners with individual refinery baselines.* Any foreign refiner of a refinery that has been assigned an individual baseline under paragraph (b) of this section shall designate all gasoline produced at the foreign refinery that is exported to the United States as either certified FRGAS or as non-certified FRGAS, except as provided in paragraph (c)(3) of this section.

(1)(i) In the case of certified FRGAS, the foreign refiner shall meet all requirements that apply to refiners under 40 CFR part 80, subparts D, E and F.

(ii) If the foreign refinery baseline is assigned, or a foreign refiner begins early use of a refinery baseline under paragraph (r) of this section, on a date other than January 1, the compliance baseline for the initial year shall be calculated under § 80.101(f) using an adjusted baseline volume, as follows: