

## § 80.370

## 40 CFR Ch. I (7–1–10 Edition)

(5) The calculations used to determine the number of credits or allotments generated under § 80.305, § 80.310 or § 80.275.

(6) The calculations used to determine any applicable adjusted cap standard under § 80.195(d).

(7) A copy of all reports submitted to EPA under § 80.370.

(8) In the case of parties who process transmix, records of any sampling and testing required under § 80.213.

(c) *Additional records importers must keep.* Any importer shall keep records that identify and verify the source of each batch of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.410(o).

(d) *Length of time records must be kept.* The records required in this section shall be kept for five years from the date they were created; except that:

(1) *Transfers of credits and allotments.* Records relating to credit and allotment transfers, except as provided in paragraph (d)(2) of this section, shall be kept by the transferor for 5 years from the date the credits or allotments are transferred, and shall be kept by the transferee for 5 years from the date the credits or allotments were transferred, used or terminated, whichever is later.

(2) *Early credits and allotments.* (i) Where the party generating the credits or allotments does not transfer the credits or allotments, records must be kept for 5 years from the date of creation, use, or termination, whichever is later.

(ii) Where early credits or allotments are transferred, records relating to such credits or allotments shall be kept by both parties for 5 years from the date the credits or allotments were transferred, used, or terminated, whichever is later.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or if requested by EPA, electronic records shall be converted to paper documents

which shall be provided to the Administrator's authorized representative.

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40184, June 12, 2002; 71 FR 31964, June 2, 2006]

### § 80.370 What are the sulfur reporting requirements?

Beginning with the 2004 averaging period, or the first year credits or allotments are generated under § 80.275 or § 80.305, whichever is earlier, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information, and in the case of a refiner or importer producing or importing both GPA gasoline and other gasoline, the information shall be separately reported:

(1) The EPA importer, or refiner and refinery facility registration numbers;

(2) The applicable baseline, average standard, and adjusted cap standard as follows:

(i) For the years 2000 through 2003, the applicable baseline under § 80.250 or § 80.295.

(ii) For the 2004 averaging period and subsequent averaging periods:

(A) All applicable average standards under § 80.195, § 80.216, § 80.240 or § 80.270;

(B) All applicable adjusted cap standards under § 80.195(d), with the 2005 report identifying both the 2004 and 2005 applicable adjusted cap standards;

(3) The total volume of gasoline produced or imported;

(4) The annual average sulfur level of the gasoline produced or imported;

(5) The annual average sulfur level after inclusion of any credits and allotments;

(6) Information, separately provided, for credits and allotments, and separately by year of creation, as follows:

(i) The number of credits and allotments at the beginning of the averaging period;

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(ii) The number of credits and allotments generated;

(iii) The number of credits and allotments used;

(iv) If any credits or allotments were obtained from or transferred to other parties, for each other party its name and EPA refiner or importer registration number, and the number of credits or allotments obtained from or transferred to the other party;

(v) The number of credits and allotments that expired at the end of the averaging period;

(vi) The number of credits and allotments that will carry over into the subsequent averaging period; and

(vii) The number of each type of allotments converted to credits;

(7) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under §80.65(d)(3) and the appropriate designation under §80.365; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under §80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under §80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The sulfur content of the batch as determined under §80.330; and

(v) For any batch of small refiner gasoline produced by any refinery with an adjustment of its per-gallon cap standard under §80.271(a), the number of sulfur credits or allotments required under paragraph (d)(1) of this section, the number of credits or allotments used, and the source(s) of these credits or allotments.

(8) When submitting reports under this paragraph (a), any importer shall exclude certified Sulfur-FRGAS.

(b) *Additional reporting requirements for importers.* Any importer shall report the following information for Sulfur-FRGAS imported during the averaging period:

(1) The EPA refiner and refinery registration numbers of each foreign refiner and refinery where the certified Sulfur-FRGAS was produced; and

(2) The total gallons of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported from each foreign refiner and refinery.

(c) *Corporate pool average reports.* (1) Annual reports filed under this section for the 2004 and 2005 averaging periods must include the party's corporate pool average as determined under §80.205.

(2) If the party submitting the annual report under paragraph (c)(1) of this section is a refiner with more than one refinery or is a refiner who also imports gasoline, then for the purposes of this paragraph, the party shall report the information required for individual refineries and for importers under paragraph (a) of this section, also in the aggregate for all the gasoline produced and imported during the calendar year.

(3) Refiners and importers exempted from corporate pool standards under §80.216 or §80.240 are exempt from reporting the information required under paragraphs (c)(1) and (c)(2) of this section.

(4) A parent company must identify in the corporate pool average reports required under paragraph (c)(1) of this section any refinery facilities owned by the parent company, any subsidiaries wholly-owned by the parent company, and any refinery facilities of the parent company's wholly-owned subsidiaries, except as provided in paragraph (c)(5) of this section.

(5) Where the wholly-owned subsidiaries of a parent company comply with the corporate pool average standards individually pursuant to §80.195(c)(6)(ii):

(i) The corporate pool average reports required under paragraph (c)(1) of this section must be submitted by each wholly-owned subsidiary of the parent company;

(ii) Each wholly-owned subsidiary of the parent company must identify in the corporate pool average reports required under paragraph (c)(1) of this section the subsidiary's parent company and any refinery facilities of the subsidiary; and

(iii) The parent company must submit the corporate pool average reports required under paragraph (c)(1) of this section for any refinery facilities owned by the parent company which

are not the refinery facilities of the parent company’s wholly-owned subsidiaries.

(d) *Report submission.* Any annual report required under this section shall be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(f) *Attest reports.* Attest reports for refiner and importer attest engagements required under §80.415 shall be submitted to the Administrator by May 31 of each year for the prior calendar year averaging period.

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40184, June 12, 2002]

§§ 80.371–80.373 [Reserved]

EXEMPTIONS

**§ 80.374 What if a refiner or importer is unable to produce gasoline conforming to the requirements of this subpart?**

In appropriate extreme and unusual circumstances (*e.g.*, natural disaster or Act of God) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to distribute gasoline which does not meet the requirements of this subpart provided the refiner or importer meets all the criteria, requirements and conditions contained in §80.73 (a) through (e).

**§ 80.375 What requirements apply to California gasoline?**

(a) *Definition.* For purposes of this subpart *California gasoline* means any gasoline designated by the refiner as for use in California.

(b) *California gasoline exemption.* California gasoline that complies with all the requirements of this section is exempt from all other provisions of this subpart.

(c) *Requirements for California gasoline.* The requirements are:

(1) Each batch of California gasoline must be designated as such by its refiner or importer;

(2) Designated California gasoline must be kept segregated from gasoline that is not California gasoline, at all points in the distribution system;

(3) Designated California gasoline must ultimately be used in the State of California and not used elsewhere;

(4) In the case of California gasoline produced outside the State of California, the transferors and transferees must meet the product transfer document requirements under §80.81(g); and

(5) Gasoline that is ultimately used in any part of the United States outside of the State of California must comply with the standards and requirements of this subpart, regardless of any designation as California gasoline.

(d) *Use of California test methods and off site sampling procedures.* In the case of any gasoline that is not California gasoline and that is either produced at a refinery located in the State of California or is imported from outside the United States into the State of California, the refiner or importer may, with regard to such gasoline:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations instead of the sampling and testing methods required under §80.330; and

(2) Determine the sulfur content of gasoline at off site tankage as permitted in §80.81(h)(2).

**§ 80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?**

Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing (“R&D”) purposes by submitting to EPA an application that includes all the information listed in paragraph (b) of this section.

(a) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and