

§ 80.94

40 CFR Ch. I (7-1-10 Edition)

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:

$$AV_{1990} = (D/365) \times V_{1990}$$

where:

AV_{1990} = Adjusted 1990 baseline volume

D = Number of days remaining in the year, beginning with the day the foreign refinery baseline is approved or the day the foreign refiner begins early use of a refinery baseline, whichever is later

V_{1990} = Foreign refinery's 1990 baseline volume.

(2) In the case of non-certified FRGAS, the foreign refiner shall meet the following requirements, except the foreign refiner shall substitute the name "non-certified FRGAS" for the names "reformulated gasoline" or "RBOB" wherever they appear in the following requirements:

(i) The designation requirements in § 80.65(d)(1);

(ii) The recordkeeping requirements in § 80.74 (a), and (b)(3);

(iii) The reporting requirements in § 80.75 (a), (m), and (n);

(iv) The registration requirements in § 80.76;

(v) The product transfer document requirements in § 80.77 (a) through (f), and (j);

(vi) The prohibition in § 80.78(a)(10), (b) and (c); and

(vii) The independent audit requirements in §§ 80.125 through 80.127, 80.128 (a) through (c), and (g) through (i), and 80.130.

(3)(i) Any foreign refiner that has been assigned an individual baseline for a foreign refinery under paragraph (b) of this section may elect to classify no gasoline imported into the United States as 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) Be for an entire calendar year averaging period and apply to all gasoline produced during the calendar year at the foreign refinery that is imported into 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.

(iii) A foreign refiner who has aggregated refineries under § 80.101(h) shall make the same election under paragraph (c)(3)(i) of this section for all refineries in the aggregation.

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

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

(2) On each occasion when any person transfers custody or title to any FRGAS prior to its being imported into

§ 80.94

40 CFR Ch. I (7-1-10 Edition)

the United States, the following information shall be included as part of the product transfer document information in §§ 80.77 and 80.106:

(i) Identification of the gasoline as certified FRGAS or as non-certified FRGAS; and

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

(3) On each occasion when FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner shall prepare a certification for each batch of the FRGAS that meets the following requirements:

(i) The certification 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 FRGAS;

(B) The identification of the gasoline as certified FRGAS or non-certified FRGAS;

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

(D) A declaration that the FRGAS is being included in the compliance baseline calculations under § 80.101(f) for the refinery that produced the FRGAS; and

(E) In the case of certified FRGAS:

(1) The values for each parameter required to calculate NO_x and exhaust toxics emissions performance as determined under paragraph (f) of this section; and

(2) A declaration that the FRGAS is being included in the compliance calculations under § 80.101(g) for the refinery that produced the FRGAS.

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

(e) *Transfers of FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as FRGAS is imported into the United States. A foreign refiner may remove the 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 baseline calculations under § 80.101(h); and

(B) In the case of certified FRGAS, the volume and parameter values of the gasoline from the compliance calculations under § 80.101(g);

(ii) The exclusions under paragraph (e)(1)(i) of this section shall be on the basis of the parameter 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 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 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 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 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 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 values for sulfur, benzene, gravity, E200 and E300 using the methodologies specified in § 80.46, by:

(A) The third party analyzing the sample; or

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

Environmental Protection Agency

§ 80.94

(iii) Determine the values for aromatics, olefins, RVP and each oxygenate specified in § 80.65(e)(2) for the gasoline loaded onto the vessel, by:

(A) Completing the analysis procedures under paragraph (f)(2)(ii) of this section for the additional parameters; or

(B) Obtaining from the foreign refiner the test results of samples collected from each shore tank containing gasoline that was loaded onto the vessel, and calculating the parameter values for the gasoline loaded onto the vessel from the tank parameter values and the gasoline volume from each such shore tank that was loaded;

(iv) Review original documents that reflect movement and storage of the certified FRGAS from the refinery to the load port, and from this review determine:

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

(B) That the FRGAS remained segregated from:

(1) Non-FRGAS and non-certified FRGAS; and

(2) Other certified FRGAS produced at a different refinery, except that certified FRGAS may be combined with other certified FRGAS produced at refineries that are aggregated under § 80.101(h);

(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, 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) A person may be used to meet the third party requirements in this paragraph (f) only if:

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

(ii) The person is independent under the criteria specified in § 80.65(f)(2)(iii); and

(iii) The person signs 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) Any foreign refiner and any United States importer of certified 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, for the parameter values for sulfur, benzene, gravity, E200 and E300, and for the NO_x and exhaust toxics emissions performance; except that

(ii) Where a vessel transporting certified 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 not met at the first United States port of entry, the requirements of paragraph (g)(1) and (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 or his immediate designee 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 paragraph (g)(2)(ii) apply if:

(A)(1) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(2) For any parameter specified in paragraph (f)(2)(ii) of this section, the values determined at the port of entry and at the load port differ by more than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM); unless

(B) The NO_x and exhaust toxics emissions performance, in grams per mile, calculated using the port of entry test results, are each equal to or less than

the NO_x and exhaust toxics emissions performance calculated using the load port test results;

(ii) The United States importer and the foreign refiner shall treat the gasoline as non-certified FRGAS, and the foreign refiner shall:

(A) Exclude the gasoline volume and properties from its conventional gasoline NO_x and exhaust toxics compliance calculations under § 80.101(g); and

(B) Include the gasoline volume in its compliance baseline calculation under § 80.101(f), unless the foreign refiner establishes that the United States importer classified the gasoline only as conventional gasoline and not as reformulated gasoline.

(h) *Attest requirements.* The following additional procedures shall be carried out by any foreign refiner of FRGAS as part of the attest engagement for each foreign refinery under 40 CFR part 80, subpart F.

(1) Include in the inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) non-FRGAS in addition to the gasoline types listed in § 80.128 (b) and (c).

(2) Obtain separate listings of all tenders of certified FRGAS, and of non-certified 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 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 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.

(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 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 FRGAS is stored, and pipeline activity records for any pipeline used to transport the certified FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the certified FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the certified FRGAS was mixed with any non-certified FRGAS, non-FRGAS, or any certified FRGAS produced at a different refinery that was not aggregated under § 80.101(h).

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

(ii) 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. 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-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 paragraph (h)(6) of this section where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with

Environmental Protection Agency

§ 80.94

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 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 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) 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 in-

spections 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 parameters, and transfers of title or custody, of any gasoline or blendstocks, whether FRGAS or non-FRGAS, produced at the foreign refinery during the period January 1, 1990 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 parameters and volume of FRGAS;

(C) The proper classification of gasoline as being FRGAS or as not being FRGAS, or as certified FRGAS or as non-certified FRGAS;

(D) Transfers of title or custody to FRGAS;

(E) Sampling and testing of FRGAS;

(F) Work performed and reports prepared by independent third parties and by independent auditors under the requirements of this section, 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 the foreign refiner or any officer, or employee of the foreign refiner for any action by EPA

or otherwise by the United States related to the requirements of 40 CFR part 80, subparts D, E and F.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder shall be governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(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 baseline, producing and exporting gasoline under an individual refinery baseline, and all other actions to comply with the requirements of 40 CFR part 80, subparts D, E and F relating to the establishment and use of an individual refinery baseline constitute actions or activities covered by and within the meaning of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents, officers, and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under 40 CFR part 80, subparts D, E and F, including such conduct that violates Title 18 U.S.C. section 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

(6) The foreign refiner, or its agents, officers, or employees, will not seek to detain or to impose civil or criminal remedies 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 FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the FRGAS to the United States, the foreign refiner shall obtain from each such other company a com-

mitment 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 baseline under this section, the foreign refiner, its agents, officers, 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, officers, and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under 40 CFR part 80, subparts D, E and F, including such conduct that violates Title 18 U.S.C. section 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

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

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

$$\text{Bond} = G \times \$0.01$$

where:

Bond = amount of the bond in U.S. dollars

G = the largest volume of conventional gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year

(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 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 be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of 40 CFR part 80, subparts D, E and F, including such conduct that violates Title 18 U.S.C. section 1001, Clean Air Act section 113(c)(2), or other applicable provisions of the Clean Air Act.

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

(1) *Blendstock tracking.* For purposes of blendstock tracking by any foreign refiner under § 80.102 by a foreign refiner with an individual refinery baseline, the foreign refiner may exclude from the calculations required in § 80.102(d) the volume of applicable blendstocks for which the foreign refiner has sufficient evidence in the form of documentation that the blendstocks were used to produce gasoline used outside the United States.

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

(n) *Prohibitions.* (1) No person may combine certified FRGAS with any non-certified FRGAS or non-FRGAS, and no person may combine certified FRGAS with any certified FRGAS produced at a different refinery that is not aggregated under § 80.101(h), 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 FRGAS or as non-FRGAS, and each batch classified as FRGAS shall be further classified as certified FRGAS or as non-certified FRGAS.

(2) Gasoline shall be classified as certified FRGAS or as non-certified 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 FRGAS under paragraph (g) of this section.

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

(i) In the case of both certified and non-certified FRGAS, have an independent third party:

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

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

(C) Determine the name and country of registration of the vessel used to transport the 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 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 values for sulfur, benzene, gravity, E200 and E300 using the methodologies specified in § 80.46, by:

§ 80.94

40 CFR Ch. I (7-1-10 Edition)

(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 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)(i) Any United States importer shall meet the requirements specified for conventional gasoline in §80.101 for any imported conventional gasoline that is not classified as certified FRGAS under paragraph (o)(2) of this section.

(ii) The baseline applicable to a United States importer who has not been assigned an individual importer baseline under §80.91(b)(4) shall be the baseline specified in paragraph (p) of this section.

(p) *Importer Baseline.* (1) Each calendar year starting in 2000, the Administrator shall calculate the volume weighted average NO_x emissions of imported conventional gasoline for a multi-year period (MYA_{NO_x}). This calculation:

(i) Shall use the Phase II Complex Model;

(ii) Shall include all conventional gasoline in the following categories:

(A) Imported conventional gasoline that is classified as conventional gasoline, and included in the conventional gasoline compliance calculations of importers for each year; and

(B) Imported conventional gasoline that is classified as certified FRGAS, and included in the conventional gasoline compliance calculations of foreign refiners for each year;

(iii)(A) In 2000 only, shall be for the 1998 and 1999 averaging periods and also shall include all conventional gasoline classified as FRGAS and included in the conventional gasoline compliance calculations of a foreign refiner for 1997, and all conventional gasoline batches not classified as FRGAS that are imported during 1997 beginning on the date the first batch of FRGAS ar-

rives at a United States port of entry; and

(B) Starting in 2001, shall include imported conventional gasoline during the prior three calendar year averaging periods.

(2)(i) If the volume-weighted average NO_x emissions (MYA_{NO_x}), calculated in paragraph (p)(1) of this section, is greater than 1,465 mg/mile, the Administrator shall calculate an adjusted baseline for NO_x according to the following equation:

$$AB_{NO_x} = 1,465 \text{ mg/mile} - (MYA_{NO_x} - 1,465 \text{ mg/mile})$$

where:

AB_{NO_x} = Adjusted NO_x baseline, in mg/mile

MYA_{NO_x} = Multi-year average NO_x emissions, in mg/mile

(ii) For the 1998 and 1999 multi-year averaging period only the value of AB_{NO_x} shall not be larger than 1,480 mg/mile regardless of the calculation under paragraph (p)(2)(i) of this section.

(3)(i) Notwithstanding the provisions of §80.91(b)(4)(iii), the baseline NO_x emissions values applicable to any United States importer who has not been assigned an individual importer baseline under §80.91(b)(4) shall be the more stringent of the statutory baseline value for NO_x under §80.91(c)(5), or the adjusted NO_x baseline calculated in paragraph (p)(2) of this section.

(ii) On or before June 1 of each calendar year, the Administrator shall announce the NO_x baseline that applies to importers under this paragraph (p). If the baseline is an adjusted baseline, it shall be effective for any conventional gasoline imported beginning 60 days following the Administrator's announcement. If the baseline is the statutory baseline, it shall be effective upon announcement. A baseline shall remain in effect until the effective date of a subsequent change to the baseline pursuant to this paragraph (p).

(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;

Environmental Protection Agency

§ 80.101

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in 40 CFR part 80, subparts D, E and F; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) *Early use of a foreign refinery baseline.* (1) A foreign refiner may begin using an individual refinery baseline before EPA has approved the baseline, provided that:

(i) A baseline petition has been submitted as required in paragraph (b) of this section;

(ii) EPA has made a provisional finding that the baseline petition is complete;

(iii) The foreign refiner has made the commitments required in paragraph (i) of this section;

(iv) The persons who will meet the independent third party and independent attest requirements for the foreign refinery have made the commitments required in paragraphs (f)(3)(iii) and (h)(7)(iii) of this section; and

(v) The foreign refiner has met the bond requirements of paragraph (k) of this section.

(2) In any case where a foreign refiner uses an individual refinery baseline before final approval under paragraph (r)(1) of this section, and the foreign refinery baseline values that ultimately are approved by EPA are more stringent than the early baseline values used by the foreign refiner, the foreign refiner shall recalculate its compliance, *ab initio*, using the baseline values approved by EPA, and the foreign refiner shall be liable for any resulting violation of the conventional gasoline requirements.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under paragraph (b) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph

(d)(3) or (g)(1)(ii) of this section shall be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may be specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or in the case of (g)(1)(ii) the vessel owner, or by that person's immediate designee, and shall contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner or vessel owner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR part 80, subparts D, E and F and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand that the provisions of 40 CFR part 80, subparts D, E and F, including 40 CFR 80.94 (i), (j) and (k), apply to [insert name of foreign refiner or vessel owner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to \$10,000, and/or imprisonment for up to five years.

[62 FR 45563, Aug. 28, 1997]

§§ 80.95–80.100 [Reserved]

§ 80.101 Standards applicable to refiners and importers.

Any refiner or importer of conventional gasoline shall meet the standards specified in this section over the specified averaging period, beginning on January 1, 1995.

(a) *Averaging period.* The averaging period for the standards specified in this section shall be January 1 through December 31, except as provided in paragraphs (k) and (l) of this section.

(b) *Conventional gasoline compliance standards—(1) Simple model standards.* The simple model standards are the following: