

§ 80.1

40 CFR Ch. I (7–1–12 Edition)

80.1468 Incorporation by reference.

Subpart N—Additional Requirements for Gasoline-Ethanol Blends

80.1500 Definitions.

80.1501 What are the labeling requirements that apply to retailers and wholesale purchaser-consumers of gasoline-ethanol blends that contain greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol?

80.1502 What are the survey requirements for gasoline-ethanol blends?

80.1503 What are the product transfer document requirements for gasoline-ethanol blends, gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?

80.1504 What acts are prohibited under this subpart?

80.1505 Who is liable for violations of this subpart?

80.1506 What penalties apply under this subpart?

80.1507 What are the defenses for acts prohibited under this subpart?

80.1508 What evidence may be used to determine compliance with the requirements of this subpart and liability for violations of this subpart?

APPENDIX A TO PART 80—TEST FOR THE DETERMINATION OF PHOSPHORUS IN GASOLINE

APPENDIX B TO PART 80—TEST METHODS FOR LEAD IN GASOLINE

APPENDIXES C–G TO PART 80 [RESERVED]

AUTHORITY: 42 U.S.C. 7414, 7521(1), 7545 and 7601(a).

SOURCE: 38 FR 1255, Jan. 10, 1973, unless otherwise noted.

EFFECTIVE DATE NOTE: At 59 FR 7716, Feb. 16, 1994, EPA published amendments to part 80 containing information collection and recordkeeping requirements, which will not become effective until approval has been given by the Office of Management and Budget.

Subpart A—General Provisions

§ 80.1 Scope.

(a) This part prescribes regulations for the control and/or prohibition of fuels and additives for use in motor vehicles and motor vehicle engines. These regulations are based upon a determination by the Administrator that the emission product of a fuel or additive will endanger the public health, or will impair to a significant degree the performance of a motor vehicle emission control device in general use or which the Administrator finds has been developed to a point where in a reason-

able time it would be in general use were such regulations promulgated; and certain other findings specified by the Act.

(b) Nothing in this part is intended to preempt the ability of State or local governments to control or prohibit any fuel or additive for use in motor vehicles and motor vehicle engines which is not explicitly regulated by this part.

[38 FR 1255, Jan. 10, 1973, as amended at 38 FR 33741, Dec. 6, 1973; 42 FR 25732, May 19, 1977]

§ 80.2 Definitions.

As used in this part:

(a) *Act* means the Clean Air Act, as amended (42 U.S.C. 1857 *et seq.*).

(b) *Administrator* means the Administrator of the Environmental Protection Agency.

(c) *Gasoline* means any fuel sold in any State¹ for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline.

(d) *Previously certified gasoline*, or PCG, means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards in Subparts D, E, H, and J of this part, as appropriate.

(e) *Lead additive* means any substance containing lead or lead compounds.

(f) *Previously designated diesel fuel* or PDD means diesel fuel that has been previously designated and included by a refiner or importer in a batch for purposes of complying with the standards and requirements of subpart I of this part.

(g) *Unleaded gasoline* means gasoline which is produced without the use of any lead additive and which contains not more than 0.05 gram of lead per gallon and not more than 0.005 gram of phosphorus per gallon.

(h) *Refinery* means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel

¹State means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands.

Environmental Protection Agency

§ 80.2

fuel, or at which blendstock is added to gasoline or diesel fuel.

(i) *Refiner* means any person who owns, leases, operates, controls, or supervises a refinery.

(j) *Retail outlet* means any establishment at which gasoline, diesel fuel, methanol, natural gas or liquified petroleum gas is sold or offered for sale for use in motor vehicles or nonroad engines, including locomotive engines or marine engines.

(k) *Retailer* means any person who owns, leases, operates, controls, or supervises a retail outlet.

(l) *Distributor* means any person who transports or stores or causes the transportation or storage of gasoline or diesel fuel at any point between any gasoline or diesel fuel refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility.

(m) *Lead additive manufacturer* means any person who produces a lead additive or sells a lead additive under his own name.

(n) *Reseller* means any person who purchases gasoline or diesel fuel identified by the corporate, trade, or brand name of a refiner from such refiner or a distributor and resells or transfers it to retailers or wholesale purchaser-consumers displaying the refiner's brand, and whose assets or facilities are not substantially owned, leased, or controlled by such refiner.

(o) *Wholesale purchaser-consumer* means any person that is an ultimate consumer of gasoline, diesel fuel, methanol, natural gas, or liquified petroleum gas and which purchases or obtains gasoline, diesel fuel, natural gas or liquified petroleum gas from a supplier for use in motor vehicles or nonroad engines, including locomotive engines or marine engines and, in the case of gasoline, diesel fuel, methanol or liquified petroleum gas, receives delivery of that product into a storage tank of at least 550-gallon capacity substantially under the control of that person.

(p)-(q) [Reserved]

(r) *Importer* means a person who imports gasoline, gasoline blending stocks or components, or diesel fuel from a foreign country into the United States (including the Commonwealth

of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands).

(s) *Gasoline blending stock, blendstock, or component* means any liquid compound which is blended with other liquid compounds to produce gasoline.

(t) *Carrier* means any distributor who transports or stores or causes the transportation or storage of gasoline or diesel fuel without taking title to or otherwise having any ownership of the gasoline or diesel fuel, and without altering either the quality or quantity of the gasoline or diesel fuel.

(u) *Ethanol blending plant* means any refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner.

(v) *Ethanol blender* means any person who owns, leases, operates, controls, or supervises an ethanol blending plant.

(w) *Cetane index* or "*Calculated cetane index*" is a number representing the ignition properties of diesel fuel oils from API gravity and mid-boiling point as determined by ASTM standard method D 976-80, entitled "Standard Methods for Calculated Cetane Index of Distillate Fuels". ASTM test method D 976-80 is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from the American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103. A copy may be inspected at the Air Docket Section (A-130), Room M-1500, U.S. Environmental Protection Agency, Docket No. A-86-03, 401 M Street SW., Washington, DC 20460 or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(x) *Diesel fuel* means any fuel sold in any State or Territory of the United States and suitable for use in diesel engines, and that is—

(1) A distillate fuel commonly or commercially known or sold as No. 1 diesel fuel or No. 2 diesel fuel;

§ 80.2

40 CFR Ch. I (7–1–12 Edition)

(2) A non-distillate fuel other than residual fuel with comparable physical and chemical properties (*e.g.*, biodiesel fuel); or

(3) A mixture of fuels meeting the criteria of paragraphs (1) and (2) of this definition.

(y) *Motor vehicle diesel fuel* means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use in motor vehicles or motor vehicle engines.

(z) *Aromatic content* is the aromatic hydrocarbon content in volume percent as determined by ASTM standard test method D1319–03^{e1}, entitled, “Standard Test Method for Hydrocarbon Types in Liquid Petroleum Products by Fluorescent Indicator Adsorption”. ASTM standard test method D1319–03^{e1}, approved November 1, 2003, is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959, or by contacting ASTM customer service at 610–832–9585, or by contacting the e-mail address of service@astm.org from the ASTM Web site of <http://www.astm.org>. For further information on this test method, please contact the Environmental Protection Agency at 734–214–4582. Copies may be inspected at the Air Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, or at the National Archives and Records Administration (NARA). The telephone number for the Air Docket Public Reading Room is (202) 566–1742. For information on the availability of this material at NARA, call 202–741–6030 or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(aa) [Reserved]

(bb) *Sulfur percentage* is the percentage of sulfur in diesel fuel by weight, as determined using the applicable sampling and testing methodologies set forth in § 80.580.

(cc) *Designated Volatility Nonattainment Area* means any area designated as being in nonattainment with the National Ambient Air Quality Standard

for ozone pursuant to rulemaking under section 107(d)(4)(A)(ii) of the Clean Air Act.

(dd) *Designated Volatility Attainment Area* means an area not designated as being in nonattainment with the National Ambient Air Quality Standard for ozone pursuant to rulemaking under section 107(d)(4)(A)(ii) of the Clean Air Act.

(ee) *Reformulated gasoline* means any gasoline whose formulation has been certified under § 80.40, and which meets each of the standards and requirements prescribed under § 80.41.

(ff) *Conventional gasoline* means any gasoline which has not been certified under § 80.40.

(gg) *Batch of gasoline* means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline.

(hh) *Covered area* means each of the geographic areas specified in § 80.70 in which only reformulated gasoline may be sold or dispensed to ultimate consumers.

(ii) *Reformulated gasoline credit* means the unit of measure for the paper transfer of benzene content resulting from reformulated gasoline which contains less than 0.95 volume percent benzene.

(jj) *Oxygenate* means any substance which, when added to gasoline, increases the oxygen content of that gasoline. Lawful use of any of the substances or any combination of these substances requires that they be “substantially similar” under section 211(f)(1) of the Clean Air Act, or be permitted under a waiver granted by the Administrator under the authority of section 211(f)(4) of the Clean Air Act.

(kk) *Reformulated gasoline blendstock for oxygenate blending, or RBOB* means a petroleum product which, when blended with a specified type and percentage of oxygenate, meets the definition of reformulated gasoline, and to which the specified type and percentage of oxygenate is added other than by the refiner or importer of the RBOB at the refinery or import facility where the RBOB is produced or imported.

(ll) *Oxygenate blending facility* means any facility (including a truck) at which oxygenate is added to gasoline

Environmental Protection Agency

§ 80.2

or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives.

(mm) *Oxygenate blender* means any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility.

(nn) [Reserved]

(oo) *Liquefied petroleum gas* means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25 °C and pressure = 1 atm), excluding natural gas.

(pp) *Control area* means a geographic area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by section 211(m) of the Act.

(qq) *Control period* means the period during which oxygenated gasoline must be sold or dispensed in any control area, pursuant to section 211(m)(2) of the Act.

(rr) *Oxygenated gasoline* means gasoline which contains a measurable amount of oxygenate.

(ss) *Tank truck* means a truck and/or trailer used to transport or cause the transportation of gasoline or diesel fuel, that meets the definition of motor vehicle in section 216(2) of the Act.

(tt) *Natural gas* means a fuel whose primary constituent is methane.

(uu) *Methanol* means any fuel sold for use in motor vehicles and commonly known or commercially sold as methanol or MXX, where XX is the percent methanol (CH₃OH) by volume.

(vv) *Opt-in area*. An area which becomes a covered area under § 80.70 pursuant to section 211(k)(6) of the Clean Air Act.

(ww) *Gasoline Treated as Blendstock, or GTAB*, means imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.

(xx) *Diesel fuel additive* means any substance not composed solely of carbon and/or hydrogen, or of diesel

blendstocks, that is added to, intended to be added to, used in, or offered for use in motor vehicle diesel fuel or NRLM diesel fuel or in diesel motor vehicle or diesel NRLM engine fuel systems subsequent to the production of diesel fuel by processing crude oil from refinery processing units.

(yy)-(zz) [Reserved]

(aaa) *Distillate fuel* means diesel fuel and other petroleum fuels that can be used in engines that are designed for diesel fuel. For example, jet fuel, heating oil, kerosene, No. 4 fuel, DMX, DMA, DMB, and DMC are distillate fuels; and natural gas, LPG, gasoline, and residual fuel are not distillate fuels. Blends containing residual fuel may be distillate fuels.

(bbb) *Residual fuel* means a petroleum fuel that can only be used in diesel engines if it is preheated before injection. For example, No. 5 fuels, No. 6 fuels, and RM grade marine fuels are residual fuels. Note: Residual fuels do not necessarily require heating for storage or pumping.

(ccc) *Heating oil* means any #1, #2, or non-petroleum diesel blend that is sold for use in furnaces, boilers, and similar applications and which is commonly or commercially known or sold as heating oil, fuel oil, and similar trade names, and that is not jet fuel, kerosene, or MVNRLM diesel fuel.

(ddd) *Jet fuel* means any distillate fuel used, intended for use, or made available for use in aircraft.

(eee) *Kerosene* means any No.1 distillate fuel commonly or commercially sold as kerosene.

(fff) *#1D* means the distillate fuel classification relating to "No. 1-D" diesel fuels as described in ASTM D 975-04. The Director of the Federal Register approved the incorporation by reference of ASTM D 975-04, Standard Specification for Diesel Fuel Oils, as prescribed in 5 U.S.C. 552(a) and 1 CFR part 51. Anyone may purchase copies of this standard from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Anyone may inspect copies at the U.S. EPA, Air and Radiation Docket and Information Center, 1301 Constitution Ave., NW., Room B102, EPA West Building, Washington, DC 20460 or at the National Archives and Records

§ 80.2

40 CFR Ch. I (7–1–12 Edition)

Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(ggg) #2D means the distillate fuel classification relating to “No. 2-D” diesel fuels as described in ASTM D 975-04.

(hhh)–(jjj) [Reserved]

(kkk) *Nonroad diesel engine* means an engine that is designed to operate with diesel fuel that meets the definition of nonroad engine in 40 CFR 1068.30, including locomotive and marine diesel engines.

(lll) *Locomotive engine* means an engine used in a locomotive as defined under 40 CFR 92.2.

(mmm) *Marine engine* and *Category 3* have the meanings given under 40 CFR 94.2.

(nnn) *Nonroad, locomotive, or marine (NRLM) diesel fuel* means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use, as a fuel in any nonroad diesel engines, including locomotive and marine diesel engines, except the following: Distillate fuel with a T90 at or above 700 °F that is used only in Category 2 and 3 marine engines is not NRLM diesel fuel, and ECA marine fuel is not NRLM diesel fuel (note that fuel that conforms to the requirements of NRLM diesel fuel is excluded from the definition of “ECA marine fuel” in this section without regard to its actual use). Use the distillation test method specified in 40 CFR 1065.1010 to determine the T90 of the fuel. NR diesel fuel and LM diesel fuel are subcategories of NRLM diesel fuel.

(1) Any diesel fuel that is sold for use in stationary engines that are required to meet the requirements of § 80.510(a) and/or (b), when such provisions are applicable to nonroad engines, shall be considered NRLM diesel fuel.

(2) [Reserved]

(ooo) *Nonroad (NR) diesel fuel* means any NRLM diesel fuel that is not “locomotive or marine (LM) diesel fuel.”

(ppp) *Locomotive or marine (LM) diesel fuel* means any diesel fuel or other distillate fuel that is used, intended for use, or made available for use, as a fuel

in locomotive or marine diesel engines, except for the following fuels:

(1) Fuel that is also used, intended for use, or made available for use in motor vehicle engines or nonroad engines other than locomotive and marine diesel engines is not LM diesel fuel.

(2) Distillate fuel with a T90 greater than 700 °F that is used only in Category 2 and 3 marine engines is not LM diesel fuel. Use the distillation test method specified in 40 CFR 1065.1010 to determine the T90 of the fuel.

(qqq) *MVNRLM diesel fuel* means any diesel fuel or other distillate fuel that meets the definition of motor vehicle (MV) or nonroad, locomotive, or marine (NRLM) diesel fuel. Motor vehicle diesel fuel, NRLM diesel fuel, NR diesel fuel, and LM diesel fuel are subcategories of MVNRLM diesel fuel.

(rrr) *Solvent yellow 124* means N-ethyl-N-[2-[1-(2-methylpropoxy)ethoxy]-4-phenylazo]-benzeneamine.

(sss) *Non-petroleum diesel (NP diesel)* means a diesel fuel that contains at least 80 percent mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

(ttt) *ECA marine fuel* is diesel, distillate, or residual fuel that meets the criteria of paragraph (ttt)(1) of this section, but not the criteria of paragraph (ttt)(2) of this section.

(1) All diesel, distillate, or residual fuel used, intended for use, or made available for use in Category 3 marine vessels while the vessels are operating within an Emission Control Area (ECA) is ECA marine fuel, unless it meets the criteria of paragraph (ttt)(2) of this section.

(2) ECA marine fuel does not include any of the following fuel:

(i) Fuel that is allowed by 40 CFR part 1043 to exceed the fuel sulfur limits for operation in an ECA (such as fuel used by excluded vessels or vessels equipped with equivalent emission controls in conformance with 40 CFR 1043.55).

(ii) Fuel that conforms fully to the requirements of this part for NRLM diesel fuel (including being designated as NRLM).

Environmental Protection Agency

§ 80.7

(iii) Fuel used, or made available for use, in any diesel engines not installed on a Category 3 marine vessel.

(uuu) *Category 3 marine vessels*, for the purposes of this part 80, are vessels that are propelled by engines meeting the definition of "Category 3" in 40 CFR part 1042.901.

(Sec. 211, (Sec. 223, Pub. L. 95-95, 91 Stat. 764, 42 U.S.C. 7545(g)) and sec. 301(a) 42 U.S.C. 7602(a), formerly 42 U.S.C. 1857g(a)) of the Clean Air Act, as amended)

[38 FR 1255, Jan. 10, 1973]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting § 80.2, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§ 80.3 Test methods.

The lead and phosphorus content of gasoline shall be determined in accordance with test methods set forth in the appendices to this part.

[47 FR 765, Jan. 7, 1982]

§ 80.4 Right of entry; tests and inspections.

The Administrator or his authorized representative, upon presentation of appropriate credentials, shall have a right to enter upon or through any refinery, retail outlet, wholesale purchaser-consumer facility, or detergent manufacturer facility; or the premises or property of any gasoline or detergent distributor, carrier, or importer; or any place where gasoline or detergent is stored; and shall have the right to make inspections, take samples, obtain information and records, and conduct tests to determine compliance with the requirements of this part.

[61 FR 35356, July 5, 1996]

§ 80.5 Penalties.

Any person who violates these regulations shall be liable to the United States for a civil penalty of not more than the sum of \$25,000 for every day of such violation and the amount of economic benefit or savings resulting from the violation. Any violation with respect to a regulation proscribed under section 211(c), (k), (l) or (m) of the Act which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day

of violation for each and every day in the averaging period. Civil penalties shall be assessed in accordance with section 205(b) and (c) of the Act.

[58 FR 65554, Dec. 15, 1993]

§ 80.7 Requests for information.

(a) When the Administrator, the Regional Administrator, or their delegates have reason to believe that a violation of section 211(c) or section 211(n) of the Act and the regulations thereunder has occurred, they may require any refiner, distributor, wholesale purchaser-consumer, or retailer to report the following information regarding receipt, transfer, delivery, or sale of gasoline represented to be unleaded gasoline and to allow the reproduction of such information at all reasonable times.

(1) For any bulk shipment of gasoline represented to be unleaded gasoline which is transferred, sold, or delivered within the previous 6 months by a refiner or a distributor to a distributor, wholesale purchaser-consumer or a retail outlet, the refiner or distributor shall maintain and provide the following information as applicable:

(i) Business or corporate name and address of distributors, wholesale purchaser-consumers or retail outlets to which the gasoline has been transferred, sold, or delivered.

(ii) Quantity of gasoline involved.

(iii) Date of delivery.

(iv) Storage location of gasoline prior to transit via delivery vessel (e.g., location of a bulk terminal).

(v) Business or corporate name and address of the person who delivered the gasoline.

(vi) Identification of delivery vessel (e.g., truck number). This information shall be supplied by the person in paragraph (a)(1)(v) of this section who performed the delivery, e.g., common or contract carrier.

(2) For any bulk shipment of gasoline represented to be unleaded gasoline received by a retail outlet or a wholesale-purchaser-consumer facility within the previous 6 months, whether by purchase or otherwise, the retailer or wholesale purchaser-consumer shall maintain accessibility to and provide the following information: