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amount(s), or, prior to blending, with reformulated gasoline.

[59 FR 7813, Feb. 16, 1994, as amended at 59 FR 36965, July 20, 1994; 62 FR 60136, Nov. 6, 1997; 62 FR 68207, Dec. 31, 1997; 71 FR 74570, Dec. 15, 2005; 71 FR 26701, May 8, 2006; 71 FR 31961, June 2, 2006]

### § 80.78 Controls and prohibitions on reformulated gasoline.

(a) *Prohibited activities.* (1) No person may manufacture and sell or distribute, offer for sale or distribution, dispense, supply, offer for supply, store, transport, or cause the transportation of any gasoline represented as reformulated and intended for sale or use in any covered area:

(i) Unless each gallon of such gasoline meets the applicable benzene maximum standard specified in § 80.41;

(ii)–(iii) [Reserved]

(iv) Unless the product transfer documentation for such gasoline complies with the requirements in § 80.77; and

(v) During the period May 1 through September 15 for all persons except retailers and wholesale purchaser-consumers, and during the period June 1 through September 15 for all persons including retailers and wholesale purchaser-consumers:

(A) Unless each gallon of such gasoline is VOC-controlled for the proper VOC Control Region, except that gasoline designated for VOC-Control Region 1 may be used in VOC-Control Region 2;

(B) Unless each gallon of such gasoline that is subject to simple model standards has an RVP which is less than or equal to the applicable RVP maximum specified in § 80.41;

(C) Unless each gallon of such gasoline that is subject to complex model standards has a VOC emissions reduction percentage which is greater than or equal to the applicable minimum specified in § 80.41.

(2) No refiner or importer may produce or import any gasoline represented as reformulated or RBOB, and intended for sale or use in any covered area:

(i) Unless such gasoline meets the definition of reformulated gasoline or RBOB; and

(ii) Unless the properties of such gasoline or RBOB correspond to the product transfer documents.

(3) [Reserved]

(4) Gasoline shall be presumed to be intended for sale or use in a covered area unless:

(i) Product transfer documentation as described in § 80.77 accompanying such gasoline clearly indicates the gasoline is intended for sale and use only outside any covered area; or

(ii) The gasoline is contained in the storage tank of a retailer or wholesale purchaser-consumer outside any covered area.

(5) No person may combine any reformulated gasoline with any conventional gasoline or blendstock, except that a refiner may do so at a refinery under the requirements specified in § 80.65(i), or if the combined product is designated as conventional gasoline.

(6) No person may add any oxygenate to reformulated gasoline, except that such oxygenate may be added to reformulated gasoline provided that such gasoline is used in an oxygenated fuels program control area during an oxygenated fuels control period.

(7) No person may combine any reformulated gasoline blendstock for oxygenate blending with any other gasoline, blendstock, or oxygenate except:

(i) Oxygenate of the type and amount (or within the range of amounts) specified by the refiner or importer at the time the RBOB was produced or imported;

(ii) Other RBOB for which the same oxygenate type and amount (or range of amounts) was specified by the refiner or importer; or

(iii) Under the terms of paragraph (a)(5) of this section.

(8)(i) No person may combine any ethanol-blended VOC-controlled reformulated gasoline with any non-ethanol-blended VOC-controlled reformulated gasoline during the period January 1 through September 15, except that:

(ii) Notwithstanding the prohibition in paragraph (a)(8)(i), retailers and wholesale purchaser-consumers may combine at a retail outlet or wholesale purchaser-consumer facility ethanol-blended VOC-controlled reformulated gasoline with non-ethanol-blended VOC-controlled reformulated gasoline, provided that the retailer or wholesale purchaser-consumer:

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(A) Combines only batches of reformulated gasoline that have been certified under this subpart;

(B) Notifies EPA prior to combining the gasolines and identifies the exact location of the retail outlet or wholesale purchase-consumer facility and the specific tank in which the gasolines will be combined;

(C) Retains and, upon request by EPA, makes available for inspection product transfer documentation accounting for all gasoline at the retail outlet or wholesale purchaser-consumer facility; and

(D) Does not combine any VOC-controlled gasoline with any non-VOC controlled gasoline between June 1 and September 15 of each calendar year;

(iii) A retailer or wholesale purchaser-consumer may combine ethanol-blended reformulated gasoline with non-ethanol-blended reformulated gasoline under paragraph (a)(8)(ii) of this section a maximum of two periods between May 1 and September 15 of each calendar year, each such period to extend for a period of no more than ten consecutive calendar days. At the end of the ten-day period, the gasoline must be in compliance with the VOC minimum standard under § 80.41.

(A) The retailer or wholesale purchaser-consumer may demonstrate compliance with the VOC minimum standard by testing the gasoline at the end of the ten-day period using the test methods in § 80.46, where the test results show that the gasoline meets the VOC minimum standard. Under this option, the retailer or wholesale purchaser-consumer may add both ethanol-blended reformulated gasoline and non-ethanol-blended reformulated gasoline to the same tank an unlimited number of times during the ten-day period; or

(B) The retailer or wholesale purchaser-consumer will be deemed in compliance with the VOC minimum standard where the retailer or wholesale purchaser-consumer draws the tank down as low as practicable before receiving product of the other type into the tank and receives only product of the other type into the tank during the ten-day period. Under this option, the retailer or wholesale purchaser-consumer is not required to test the

gasoline at the end of the ten-day period.

(iv) Nothing in paragraphs (a)(8)(ii) or (iii) of this section shall preempt existing State laws or regulations regulating the combining of ethanol-blended reformulated gasoline with non-ethanol-blended reformulated gasoline or prohibit a State from adopting such laws or regulations in the future.

(9) Prior to January 1, 1998:

(i) No person may combine any reformulated gasoline or RBOB that is subject to the simple model standards with any reformulated gasoline or RBOB that is subject to the complex model standards, except that such gasolines may be combined at a retail outlet or wholesale purchaser-consumer facility;

(ii) No person may combine any reformulated gasoline subject to the complex model standards that is produced at any refinery or is imported by any importer with any other reformulated gasoline that is produced at a different refinery or is imported by a different importer, unless the other refinery or importer has an identical baseline for meeting complex model standards during this period; and

(iii) No person may combine any RBOB subject to the complex model standards that is produced at any refinery or is imported by any importer with any RBOB that is produced at a different refinery or is imported by a different importer, unless the other refinery or importer has an identical baseline for meeting complex model standards during this period.

(10) The prohibitions against combining certain categories of gasoline under paragraphs (a)(5), (a)(7) and (a)(8) of this section do not apply in the case of a party who is changing the type of gasoline stored in a gasoline storage tank or the type of gasoline transported through a gasoline pipe or manifold within a single facility (a gasoline storage tank, pipe, or manifold change of service), or in the case of a change of service that involves mixing gasoline with blendstock, provided that:

(i) The change of service is for a legitimate operational reason and is not for the purpose of combining the categories of gasoline or of combining gasoline with blendstock;

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(ii) Prior to adding product of the new category the volume of product of the old category in the tank, pipe or manifold is made as low as possible through normal pumping operations;

(iii) The volume of product of the new category that is added to the tank, pipe or manifold is as large as possible taking into account the availability of product of the new category; and

(iv) In any case where the new category of product is reformulated gasoline, subsequent to adding the gasoline of the new category, a representative sample from the tank, pipe or manifold is collected and analyzed, and such analysis shows compliance with each standard under § 80.41 that is relevant to the new gasoline category. The analysis for each standard must be conducted using the method specified under § 80.46, or using another method that is approved by the American Society of Testing and Materials (ASTM), provided that the protocols of the ASTM method are followed and the alternative method is correlated to the method specified under § 80.46.

(11) The prohibition against combining reformulated gasoline with RBOB under paragraph (a)(7) of this section does not apply in the case of a party who is changing the type of product stored in a tank from which trucks are loaded, from reformulated gasoline to RBOB, or vice versa, provided that:

(i) The change of service requirements described in paragraph (a)(10) of this section cannot be met without taking the storage tank out of service;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank is drawn down to the lowest point which allows trucks to be loaded during the transition;

(iii) The volume of product of the new category that is added to the tank is as large as possible taking into account the availability of product of the new category;

(iv) When transitioning from RBOB to reformulated gasoline, the reformulated gasoline must meet all applicable standards that apply at the terminal subsequent to any oxygenate blending;

(v) When transitioning from reformulated gasoline to RBOB:

(A) The oxygen content of the reformulated gasoline produced using the RBOB must be not less than the minimum oxygen amount specified in the RBOB product transfer documents;

(B) Subsequent to any oxygenate blending, the reformulated gasoline produced using the RBOB must meet all applicable standards that apply at the terminal; and

(C) The transition from reformulated gasoline to RBOB may not begin until the date the VOC-control standards no longer apply to the terminal; and

(vi) The party must demonstrate compliance with the requirements specified in paragraphs (a)(11)(iv) and (v) of this section through testing of samples collected from the terminal storage tank and from trucks loaded at the terminal subsequent to each receipt of new product until the transition is complete. The analyses must be conducted using the test method specified under § 80.46, or using another test method that is approved by the American Society of Testing and Materials (ASTM), provided that the protocols of the ASTM method are followed and the alternative method is correlated with the method specified under § 80.46.

(12)(i) The prohibited activities specified in paragraph (a)(1) of this section do not apply in the case of gasoline that is used to fuel aircraft, or racing motor vehicles or racing boats that are used only in sanctioned racing events, provided that product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as conventional gasoline that is restricted for use in aircraft, or as conventional gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events.

(ii) A vehicle shall be considered to be a racing vehicle only if the vehicle:

(A) Is operated in conjunction with sanctioned racing events;

(B) Exhibits racing features and modifications such that it is incapable of safe and practical street or highway use;

(C) Is not licensed, and is not licensable, by any state for operation on public streets or highways;

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(D) Is not operated on public streets or highways; and

(E) Could not be converted to public street or highway use at a cost that is reasonable compared to the value of the vehicle.

(b) *Liability.* Liability for violations of paragraph (a) of this section shall be determined according to the provisions of § 80.79.

(c) *Determination of compliance.* Compliance with the standards listed in paragraph (a) of this section shall be determined by use of one of the testing methodologies specified in § 80.46, except that where test results using the testing methodologies specified in § 80.46 are not available or where such test results are available but are in question, EPA may establish non-compliance with standards using any information, including the results of testing using methods that are not included in § 80.46.

(d) *Dates controls and prohibitions begin.* The controls and prohibitions specified in paragraph (a) of this section apply at any location other than retail outlets and wholesale purchaser-consumer facilities on or after December 1, 1994, at any location on or after January 1, 1995.

[59 FR 7813, Feb. 16, 1994, as amended at 59 FR 36965, July 20, 1994; 62 FR 60136, Nov. 6, 1997; 62 FR 68207, Dec. 31, 1997; 66 FR 67106, Dec. 28, 2001; 71 FR 74570, Dec. 15, 2005; 71 FR 8972, 8985, Feb. 22, 2006; 71 FR 26420, May 5, 2006; 71 FR 26701, May 8, 2006]

**§ 80.79 Liability for violations of the prohibited activities.**

(a) *Persons liable.* Where the gasoline contained in any storage tank at any facility owned, leased, operated, controlled or supervised by any refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer is found in violation of the prohibitions described in § 80.78(a), the following persons shall be deemed in violation:

(1) Each refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer who owns, leases, operates, controls or supervises the facility where the violation is found;

(2) Each refiner or importer whose corporate, trade, or brand name, or

whose marketing subsidiary's corporate, trade, or brand name, appears at the facility where the violation is found;

(3) Each refiner, importer, oxygenate blender, distributor, and reseller who manufactured, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation of any gasoline which is in the storage tank containing gasoline found to be in violation; and

(4) Each carrier who dispensed, supplied, stored, or transported any gasoline which is in the storage tank containing gasoline found to be in violation, provided that EPA demonstrates, by reasonably specific showings by direct or circumstantial evidence, that the carrier caused the violation.

(5) Notwithstanding the provisions in paragraphs (a)(1) through (a)(4) of this section: (i) Only a retailer or wholesale purchaser-consumer shall be deemed in violation for combining gasolines in a manner that is inconsistent with § 80.78(a)(8)(ii) or (iii), or for gasoline which does not comply with the VOC minimum standard under § 80.41 after the retailer or wholesale purchaser-consumer combines or causes the combining of compliant gasolines in a manner inconsistent with § 80.78(a)(8)(ii) or (iii);

(ii) No person shall be deemed in violation for gasoline which does not comply with the VOC minimum standard under § 80.41 where the non-compliance is solely due to the combining of compliant gasolines by a retailer or wholesale purchaser-consumer in a manner that is consistent with § 80.78(a)(8)(ii) and (iii).

(b) *Defenses for prohibited activities.* (1) In any case in which a refiner, importer, oxygenate blender, carrier, distributor, reseller, retailer, or wholesale purchaser-consumer would be in violation under paragraph (a) of this section, it shall be deemed not in violation if it can demonstrate:

(i) That the violation was not caused by the regulated party or its employee or agent;

(ii) That product transfer documents account for all of the gasoline in the storage tank found in violation and indicate that the gasoline met relevant requirements; and