

**§ 80.820**

**40 CFR Ch. I (7–1–08 Edition)**

(2) The annual average toxics value is calculated in accordance with § 80.825.

(e) *Deficit carryforward.* (1) A refinery or importer creates a toxics deficit, separately for reformulated gasoline and conventional gasoline, for a given averaging period, when—

(i) For conventional gasoline, its annual average toxics value is greater than the compliance baseline;

(ii) For reformulated gasoline and RBOB, combined, the annual average toxics value is less than the compliance baseline.

(2) In the calendar year following the year the toxics deficit is created, the refinery or importer shall:

(i) Achieve compliance with the refinery or importer toxics performance requirement specified in paragraph (a) of this section; and

(ii) Generate additional toxics credits sufficient to offset the toxics deficit of the previous year.

(f) *Credit carryforward.* (1) A refinery or importer generates toxics credits, separately for reformulated gasoline and conventional gasoline, for a given averaging period, when—

(i) For conventional gasoline, its annual average toxics value is less than the compliance baseline;

(ii) For reformulated gasoline and RBOB, combined, the annual average toxics value is greater than the compliance baseline.

(2) Toxics credits may be used to offset a toxics deficit in the calendar year following the year the credits are generated, provided the following criteria are met:

(i) Reformulated gasoline toxics credits are only to be used to offset a reformulated gasoline toxics deficit; conventional gasoline credits are only to be used to offset a conventional gasoline toxics deficit.

(ii) A refiner only offsets a toxics deficit at a refinery with toxics credits generated by that refinery.

(iii) Credits generated on an aggregate basis may only be used to offset a deficit calculated on an aggregate basis.

(iv) Credits used to offset a deficit from the previous year may not also be carried forward to the following year. Credits in excess of those used to offset a deficit from the previous year may be

used to offset a deficit in the following year.

(v) Only toxics credits generated under this subpart may be used to offset a toxics deficit created under this subpart.

[66 FR 17263, Mar. 29, 2001, as amended at 72 FR 8544, Feb. 26, 2007]

**§ 80.820 What gasoline is subject to the toxics performance requirements of this subpart?**

For the purpose of this subpart, all reformulated gasoline, conventional gasoline and RBOB, collectively called “gasoline” unless otherwise specified, is subject to the requirements under this subpart, as applicable, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles, except for motor vehicles used only in sanctioned racing events.

(b) Gasoline that is exported for sale outside the U.S.

(c) Gasoline designated as California gasoline under § 80.845, and used in California.

(d) Gasoline used in American Samoa, Guam and the Commonwealth of the Northern Mariana Islands.

(e) Gasoline exempt per § 80.995.

(f) Gasoline exempt per § 80.1000.

**§ 80.825 How is the refinery or importer annual average toxics value determined?**

(a) The refinery or importer annual average toxics value is calculated as follows:

$$T_a = \frac{\sum_{i=1}^n (V_i \times T_i)}{\sum_{i=1}^n V_i}$$

Where:

$T_a$  = The refinery or importer annual average toxics value, as applicable.

$V_i$  = The volume of applicable gasoline produced or imported in batch  $i$ .

$T_i$  = The toxics value of batch  $i$ .

$n$  = The number of batches of gasoline produced or imported during the averaging period.

$i$  = Individual batch of gasoline produced or imported during the averaging period.

(b) The calculation specified in paragraph (a) of this section shall be made separately for each type of gasoline specified at § 80.815(b).

(c) The toxics value,  $T_i$ , of each batch of gasoline is determined using the Phase II Complex Model specified at § 80.45.

(1) The toxics value,  $T_i$ , of each batch of reformulated gasoline or RBOB, and the annual average toxics value,  $T_a$ , for reformulated gasoline and RBOB, combined, under this subpart are in percent reduction from the statutory baseline described in § 80.45(b) and volumes are in gallons.

(2) (i) The toxics value,  $T_i$ , of each batch of conventional gasoline, and the annual average toxics value,  $T_a$ , for conventional gasoline under this subpart are in milligrams per mile (mg/mile) and volumes are in gallons.

(ii) Any refiner for any refinery or importer that has received EPA approval of a petition submitted in accordance with the provisions of § 80.93(d) shall determine the toxics value,  $T_i$ , of each batch of conventional gasoline produced or imported for use in Alaska, and/or Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands in accordance with § 80.101(g)(1)(ii).

(d) All refinery or importer annual average toxics value calculations shall be conducted to two decimal places.

(e) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the toxics value, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer shall comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer shall comply with the requirements of § 80.69(a).

(f) *Gasoline excluded.* Refiners and importers shall exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery;

(2) In the case of an importer, gasoline that was imported as Certified Toxics-FRGAS under § 80.1030;

(3) Blending stocks transferred to others;

(4) Gasoline that has been included in the compliance calculations for another refinery or importer; and

(5) Gasoline exempted from standards under § 80.820.

[66 FR 17263, Mar. 29, 2001, as amended at 72 FR 60581, Oct. 25, 2007]

#### § 80.830 What requirements apply to oxygenate blenders?

Oxygenate blenders who blend oxygenate into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported are not subject to the requirements of this subpart applicable to refiners for this gasoline.

#### § 80.835 What requirements apply to butane blenders?

Butane blenders who blend butane into gasoline downstream of the refinery that produced the gasoline or the import facility where the gasoline was imported are not subject to the requirements of this subpart applicable to refiners for this gasoline.

#### § 80.840 What requirements apply to transmix processors?

Any transmix processor who produces gasoline or gasoline blendstock from transmix, or recovers gasoline or gasoline blendstock from transmix through transmix processing under § 80.84 (c) shall include such gasoline or gasoline blendstock in the baseline and compliance calculations of this subpart to the same extent such gasoline or gasoline blendstock must be included in compliance calculations under subpart D of this part for reformulated