

placed into an escrow account with instructions to the escrow agent to pay the money over to the surveyor during the course of the conduct of the survey plan.

(ii) No later than December 15 of the year preceding the year in which the surveys will be conducted, the Administrator of EPA shall be given a copy of the contract with the surveyor, proof that the money necessary to carry out the plan has either been paid to the surveyor or placed into an escrow account, and if placed into an escrow account, a copy of the escrow agreement.

[59 FR 7813, Feb. 16, 1994, as amended at 59 FR 36963, July 20, 1994; 62 FR 12576, Mar. 17, 1997; 62 FR 68207, Dec. 31, 1997; 66 FR 37165, July 17, 2001; 71 FR 74568, Dec. 15, 2005; 71 FR 26699, May 8, 2006; 72 FR 8543, Feb. 26, 2007]

#### § 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility, except that paragraph (a)(7) of this section does not apply to adjusted VOC gasoline as defined in § 80.40(c).

(a) *Requirements for refiners and importers.* For any RBOB produced or imported, the refiner or importer of the RBOB shall:

(1) Produce or import the RBOB such that, when blended with a specified type and percentage of oxygenate, it meets the applicable standards for reformulated gasoline;

(2) In order to determine the properties of RBOB for purposes of calculating compliance with per-gallon or averaged standards, conduct tests on each batch of the RBOB by:

(i) Adding the specified type and amount of oxygenate to a representative sample of the RBOB; and

(ii) Determining the properties and characteristics of the resulting gasoline using the methodology specified in § 80.65(e);

(3) Carry out the independent analysis requirements specified in § 80.65(f);

(4) [Reserved]

(5) Transfer ownership of the RBOB only to an oxygenate blender who is registered with EPA as such, or to an intermediate owner with the restric-

tion that it only be transferred to a registered oxygenate blender;

(6) Have a contract with each oxygenate blender who receives any RBOB produced or imported by the refiner or importer that requires the oxygenate blender, or, in the case of a contract with an intermediate owner, that requires the intermediate owner to require the oxygenate blender to:

(i) Comply with blender procedures that are specified by the contract and are calculated to assure blending with the proper type and amount of oxygenate;

(ii) Allow the refiner or importer to conduct the quality assurance sampling and testing required under this paragraph (a); and

(iii) Stop selling any gasoline found not to comply with the standards under which the RBOB was produced or imported.

(7) Conduct a quality assurance sampling and testing program to be carried out at the facilities of each oxygenate blender who blends any RBOB produced or imported by the refiner or importer with any oxygenate, to determine whether the reformulated gasoline which has been produced through blending complies with the applicable standards, using the methodology specified in § 80.46 for this determination.

(i) The sampling and testing program shall be conducted as follows:

(A) All samples shall be collected subsequent to the addition of oxygenate, and either:

(1) Prior combining the resulting gasoline with any other gasoline; or

(2) In the case of truck splash blending, subsequent to the delivery of the gasoline to a retail outlet or wholesale purchaser-consumer facility provided that the three most recent deliveries to the retail outlet or wholesale purchaser facility were of gasoline produced using that refiner's or importer's RBOB, and provided that any discrepancy found through the retail outlet or wholesale purchaser facility sampling is followed-up with measures reasonably designed to discover the cause of the discrepancy; and

(B) Sampling and testing shall be at one of the following rates:

(1) In the case of RBOB which is blended with oxygenate in a gasoline

storage tank, a rate of not less than one sample for every 400,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every month, whichever is more frequent; or

(2) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks through the use of computer-controlled in-line blending equipment, a rate of not less than one sample for every 200,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every three months, whichever is more frequent; or

(3) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks without the use of computer-controlled in-line blending equipment, a rate of not less than one sample for each 50,000 barrels of RBOB produced or imported by that refiner or importer which is blended, or one sample per month, whichever is more frequent;

(ii) In the event the test results for any sample indicate the gasoline does not comply with applicable standards (within the correlation ranges specified in §80.65(e)(2)(i)), the refiner or importer shall:

(A) Immediately take steps to stop the sale of the gasoline that was sampled;

(B) Take steps which are reasonably calculated to determine the cause of the noncompliance and to prevent future instances of noncompliance;

(C) Increase the rate of sampling and testing to one of the following rates:

(1) In the case of RBOB which is blended with oxygenate in a gasoline storage tank, a rate of not less than one sample for every 200,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every two weeks, whichever is more frequent; or

(2) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks through the use of computer-controlled in-line blending equipment, a rate of not less than one sample for every 100,000 barrels of RBOB produced or imported by that refiner or importer that is blended by that blender, or one sample every two months, whichever is more frequent; or

(3) In the case of RBOB which is blended with oxygenate in gasoline delivery trucks without the use of computer-controlled in-line blending equipment, a rate of not less than one sample for each 25,000 barrels of RBOB produced or imported by that refiner or importer which is blended, or one sample every two weeks, whichever is more frequent;

(D) Continue the increased frequency of sampling and testing until the results of ten consecutive samples and tests indicate the gasoline complies with applicable standards, at which time the sampling and testing may be conducted at the original frequency;

(iii) This quality assurance program is in addition to any quality assurance requirements carried out by other parties;

(8)-(9) [Reserved]

(10) Specify in the product transfer documentation for the RBOB each oxygenate type or types and amount or range of amounts which, if blended with the RBOB will result in reformulated gasoline which:

(i) Has VOC, toxics, or NO<sub>x</sub> emissions reduction percentages which are no lower than the percentages that formed the basis for the refiner's or importer's compliance determination for these parameters;

(ii) Has a benzene content and RVP level which are no higher than the values for these characteristics that formed the basis for the refiner's or importer's compliance determinations for these parameters; and

(iii) Will not cause the reformulated gasoline to violate any standard specified in §80.41.

(11) Any refiner or importer who produces or imports RBOB may comply with the following alternative quality assurance requirement instead of the contract and quality assurance sampling and testing requirements in paragraphs (a)(6) and (a)(7) of this section:

(i) To comply with the alternative quality assurance requirement under this paragraph (a)(11), a refiner or importer must either arrange to have an independent surveyor conduct a comprehensive program of annual compliance surveys, or participate in the

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funding of an organization which arranges to have an independent surveyor conduct a comprehensive program of annual compliance surveys, to be carried out in accordance with a survey plan which has been approved by EPA.

(ii) The annual compliance surveys under this paragraph (a)(11) shall be:

(A) Planned and conducted by an independent surveyor that meets the requirements in § 80.68(c)(13)(i);

(B) Conducted at retail gasoline outlets in a specified reformulated gasoline covered area;

(C) Representative of all reformulated gasoline being dispensed in the specified reformulated gasoline covered area; and

(D) Designed to achieve at least the same level of quality assurance required under paragraph (a)(7) of this section.

(iii) The compliance survey program shall require the independent surveyor conducting the surveys to:

(A) Obtain gasoline samples in accordance with the survey plan approved under this paragraph (a)(11), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken;

(B) Test or arrange for the samples to be tested for type and amount of oxygenate;

(C)(1) Obtain the product transfer documents associated with the gasoline sample from the retail outlet; or immediately notify EPA of any refusal of any party to provide product transfer documents that should be within their possession; and

(2) Immediately notify EPA of any case where the product transfer documents obtained from the retail outlet do not contain the information required in paragraph (a)(11)(vii)(A) of this section, or any case where the gasoline does not contain the type and/or minimum amount of oxygenate stated on the product transfer documents;

(D) Where the test results indicate that the gasoline does not contain the type and/or minimum amount of oxygenate stated on the product transfer documents:

(1) Determine the oxygenate blending facility that supplied the gasoline; and

(2) Obtain from the oxygenate blender documentation of the refiner's or importer's oxygenate blending instructions for the gasoline;

(E) Immediately notify EPA of any case where the test results obtained by the independent surveyor indicate that the gasoline does not contain the type and/or minimum amount of oxygenate designated for the RBOB in the refiner's or importer's blending instructions;

(F) Immediately notify EPA of any instances where a refiner, importer, terminal, distributor, carrier or retail outlet fails to cooperate in the manner described in paragraph (a)(11)(vi) of this section.

(G) Submit to EPA a report of each survey, within thirty days following completion of the survey, such report to include the following information:

(1) The identification of the person who conducted the survey;

(2) An attestation by an officer of the surveyor company that the survey was conducted in accordance with the survey plan and that the survey results are accurate;

(3) Identification of the party(ies) for whom the survey was conducted;

(4) The identification of the covered area surveyed;

(5) The dates on which the survey was conducted;

(6) The address of each facility at which a gasoline sample was collected and the date of collection;

(7) The results of the analyses of the samples for type and amount of oxygenate;

(8) The name and address of each laboratory where the gasoline samples were analyzed;

(9) A description of the methodology utilized to select the locations for sample collection and the number of samples collected; and

(10) For any samples excluded from the survey, a justification for such exclusion.

(H) Maintain all records relating to the surveys conducted under this paragraph (a)(11) for a period of at least 5 years; and

(I) At any time permit any representative of EPA to monitor the conduct of

the surveys, including sample collection, transportation, storage, and analysis.

(iv) A survey plan under this paragraph (a)(11) must include:

(A) Identification of the party(ies) for whom the survey is to be conducted;

(B) Identification of the independent surveyor;

(C) A methodology for determining:

(1) When the samples will be collected;

(2) The sample collection locations; and

(3) The number of samples to be collected during the annual compliance period;

(D) A process for notifying oxygenate blenders and other downstream parties in the affected RFG area of the product transfer documentation requirements in paragraph (a)(11)(vii)(A) of this section; and

(E) Any other elements determined by EPA to be necessary to achieve the level of quality assurance required under paragraph (a)(11)(ii)(D) of this section.

(v) Any sampling and testing pursuant to a survey plan under this paragraph (a)(11) must be conducted in a manner consistent with the applicable provisions of §§ 80.8 and 80.46.

(vi)(A) Each refiner and importer who participates in the alternative quality assurance program under this paragraph (a)(11) must take all reasonable steps to ensure that each oxygenate blender, distributor, carrier and retail outlet cooperates in this program by allowing the independent surveyor to collect samples and by providing to the independent surveyor and/or EPA, upon request, copies of product transfer documents and other records or information regarding the source of any gasoline received, the destination of any gasoline distributed, the oxygenate blending instructions for the RBOB, and the rate (volume %) that oxygenate was blended into the gasoline.

(B) Reasonable steps under paragraph (a)(11)(vii) of this section must include, but typically should not be limited to, contractual agreements with any branded facilities of the refiner or importer, including any terminals, distributors, carriers and retail outlets,

which require the branded facility to cooperate with the independent surveyor and/or EPA in the manner described in paragraph (a)(11)(vii)(A) of this section.

(vii)(A) Any terminal that blends oxygenate with RBOB which is produced or imported by any refiner or importer that complies with the alternative quality assurance requirement under this paragraph (a)(11), and any parties downstream from such oxygenate blending terminal, must include on product transfer documents information regarding the type and amount of oxygenate contained in the gasoline and identification of the oxygenate blending facility that blended the gasoline.

(B) If a party downstream from a refiner or importer that complies with the alternative quality assurance requirement under this paragraph (a)(11) fails to receive notice of the requirements in paragraph (a)(11)(vii)(A) of this section, upon notification from EPA, the party must thereafter comply with the requirements in paragraph (a)(11)(vii)(A) of this section.

(viii) The procedure for obtaining EPA approval of a survey plan under this paragraph (a)(11), and for revocation of any such approval, are as follows:

(A) A detailed survey plan which complies with the requirements of this paragraph (a)(11) must be submitted to EPA, no later than September 1 of the year preceding the calendar year in which the surveys will be conducted;

(B) The survey plan must be signed by a responsible corporate officer of the refiner or importer, or responsible officer of the organization which arranges to have an independent surveyor conduct a program of compliance surveys, as applicable; and

(C) The survey plan must be sent to the following address: Director, Transportation and Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., (6406J), Washington, DC 20460;

(D) EPA will send a letter to the party submitting a survey plan under this section, either approving or disapproving the survey plan;

(E) EPA may revoke any approval of a survey plan under this section for

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cause, including an EPA determination that the approved survey plan has proved to be inadequate in practice or that it was not diligently implemented;

(F) The approving official for an alternative quality assurance program under this section is the Director of the Transportation and Regional Programs Division, Office of Transportation and Air Quality.

(G) Any notifications required under this paragraph (a)(11) must be directed to the official designated in paragraph (a)(11)(viii)(F) of this section.

(ix)(A) No later than December 1 of the year preceding the year in which the surveys will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan;

(B) No later than December 15 of the year preceding the year in which the surveys will be conducted, EPA must receive a copy of the contract with the independent surveyor, proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account, and, if placed into an escrow account, a copy of the escrow agreement, to be sent to the official designated in paragraph (a)(11)(viii)(F) of this section.

(x) A failure of any refiner or importer to fulfill or cause to be fulfilled any of the requirements of this paragraph (a)(11) will cause the option to use the alternative quality assurance requirements under this paragraph (a)(11) to be void *ab initio*.

(b) *Requirements for oxygenate blenders.* For all RBOB received by any oxygenate blender, the oxygenate blender shall:

(1) Add oxygenate of the type(s) and amount (or within the range of amounts) specified in the product transfer documents for the RBOB; and

(2) Meet the recordkeeping requirements specified in § 80.74.

(c) [Reserved]

(d) *Requirements for distributors dispensing RBOB into trucks for blending.*

Any distributor who dispenses any RBOB into any truck which delivers gasoline to retail outlets or wholesale purchase-consumer facilities, shall for such RBOB so dispensed:

(1) Transfer the RBOB only to an oxygenate blender who has registered with the Administrator or EPA as such; and

(2) Obtain from the oxygenate blender the oxygenate blender's EPA registration number.

(e) *Additional requirements for oxygenate blenders who blend oxygenate in trucks.* Any oxygenate blender who obtains any RBOB in any gasoline delivery truck shall on each occasion it obtains RBOB from a distributor, supply the distributor with the oxygenate blender's EPA registration number.

[59 FR 7813, Feb. 16, 1994, as amended at 59 FR 36964, July 20, 1994; 62 FR 60135, Nov. 6, 1997; 66 FR 37165, July 17, 2001; 71 FR 74569, Dec. 15, 2005; 71 FR 26700, May 8, 2006; 71 FR 31959, June 2, 2006]

### § 80.70 Covered areas.

For purposes of subparts D, E, and F of this part, the covered areas are as follows:

(a) The Los Angeles-Anaheim-Riverside, California, area, comprised of:

(1) Los Angeles County;

(2) Orange County;

(3) Ventura County;

(4) That portion of San Bernadino County that lies south of latitude 35 degrees, 10 minutes north and west of longitude 115 degrees, 45 minutes west; and

(5) That portion of Riverside County, which lies to the west of a line described as follows:

(i) Beginning at the northeast corner of Section 4, Township 2 South, Range 5 East, a point on the boundary line common to Riverside and San Bernadino Counties;

(ii) Then southerly along section lines to the centerline of the Colorado River Aqueduct;

(iii) Then southeasterly along the centerline of said Colorado River Aqueduct to the southerly line of Section 36, Township 3 South, Range 7 East;