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**40 CFR Ch. I (7-1-03 Edition)**

by EPA no earlier than two weeks before the date of the survey.

(15) The procedure for seeking EPA approval for a survey program plan shall be as follows:

(i) The survey program plan shall be submitted to the Administrator of EPA for EPA's approval no later than September 1 of the year preceding the year in which the surveys will be conducted; and

(ii) Such submittal shall be signed by a responsible corporate officer of the refiner, importer, or oxygenate blender, or in the case of a comprehensive survey program plan, by an officer of the organization coordinating the survey program.

(16)(i) No later than December 1 of the year preceding the year in which the surveys will be conducted, the contract with the surveyor to carry out the entire survey plan shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the surveyor or 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]

**§ 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 im-

ported, 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) Determine properties of the RBOB which are sufficient to allow parties downstream from the refinery or import facility to establish, through sampling and testing, if the RBOB has been altered or contaminated such that it will not meet the applicable reformulated gasoline standards subsequent to the addition of the specified type and amount of oxygenate;

(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 restriction 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 quality assurance sampling and testing of the reformulated gasoline produced by the oxygenate blender;

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

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(iv) Carry out the quality assurance sampling and testing that this section requires the oxygenate blender to conduct;

(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 com-

puter-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) A refiner or importer of RBOB may, in lieu of the contractual and quality assurance requirements specified in paragraphs (a) (6) and (7) of this section, base its compliance calculations on the following assumptions:

(i) In the case of RBOB designated for any-oxygenate, assume that ethanol will be added;

(ii) In the case of RBOB designated for ether-only, assume that MTBE will be added; and

(iii) In the case of any-oxygenate and ether-only designated RBOB, assume that the volume of oxygenate added will be such that the resulting reformulated gasoline will have an oxygen content of 2.0 weight percent;

(9) Any refiner or importer who does not meet the contractual and quality assurance requirements specified in paragraphs (a) (6) and (7) of this section, and who does not designate its RBOB as ether-only or any-oxygenate, shall base its compliance calculations on the assumption that 4.0 volume percent ethanol is added to the RBOB; and

(10) Specify in the product transfer documentation for the RBOB each oxygenate type or types and amount or range of amounts which is consistent with the designation of the RBOB as any-oxygenate, or ether-only, and 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.

(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;

(2) Designate each batch of the resulting reformulated gasoline as meeting the oxygen standard per-gallon or on average;

(3) Meet the standard requirements specified in § 80.65(c) and § 80.67(f), the record keeping requirements specified in § 80.74, and the reporting requirements specified in § 80.75; and

(4) In the case of each batch of reformulated gasoline which is designated for compliance with the oxygen standard on average:

(i) Determine the volume and the weight percent oxygen of the batch using the testing methodology specified in § 80.46;

(ii) Assign a number to the batch (the "batch number"), beginning with the number one for the first batch produced each calendar year and each subsequent batch during the calendar year being assigned the next sequential number, and such numbers to be preceded by the oxygenate blender's registration number, the facility number, and the second two digits of the year in which the batch was produced (e.g., 4321-4321-95-001, 4321-4321-95-002, etc.); and

(iii) Meet the compliance audit requirements specified in § 80.65(h).

(c) *Additional requirements for terminal storage tank blending.* Any oxygenate blender who produces reformulated gasoline by blending any oxygenate with any RBOB in any gasoline storage tank, other than a truck used for delivering gasoline to retail outlets or wholesale purchaser-consumer facilities, shall, for each batch of reformulated gasoline so produced determine the oxygen content and volume of this gasoline prior to the gasoline leaving the oxygenate blending facility, using the methodology specified in § 80.46.

(d) *Additional 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 purchaser-consumer facilities, shall for such RBOB so dispensed:

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

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(2) Transfer any RBOB designated as ether-only RBOB only if the distributor has a reasonable basis for knowing the oxygenate blender will blend an oxygenate other than ethanol with the RBOB; and

(3) 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:

(1) On each occasion it obtains RBOB from a distributor, supply the distributor with the oxygenate blender's EPA registration number;

(2) Conduct a quality assurance sampling and testing program to determine whether the proper type and amount of oxygenate is added to RBOB. The program shall be conducted as follows:

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

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

(B) 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 that was produced by that oxygenate blender and that had the same oxygenate requirements, and provided that any discrepancy in oxygenate type or amount found through the retail outlet or wholesale purchaser facility sampling is followed-up with measures reasonably designed to discover the cause of the discrepancy;

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

(A) In the case computer-controlled in-line blending is used, a rate of not less than one sample per each five hundred occasions RBOB and oxygenate are loaded into a truck by that oxygenate blender, or one sample every three months, whichever is more frequent; or

(B) In the case computer-controlled in-line blending is not used, a rate of not less than one sample per each one hundred occasions RBOB and oxygenate are blended in a truck by that oxygenate blender, or one sample per month, whichever is more frequent;

(iii) Sampling and testing shall be of the gasoline produced through one of the RBOB-oxygenate blends produced by that oxygenate blender;

(iv) Samples shall be analyzed for oxygenate type and oxygen content using the testing methodology specified at § 80.46; and

(v) In the event the testing results for any sample indicate the gasoline does not contain the specified type and amount of oxygenate (within the ranges specified in § 80.70(b)(2)(i)):

(A) Immediately stop selling (or where possible, to stop any transferee of the gasoline from selling) the gasoline which was sampled;

(B) Take steps to determine the cause of the noncompliance;

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

(1) In the case computer-controlled in-line blending is used, a rate of not less than one sample per each two hundred and fifty occasions RBOB and oxygenate are loaded into a truck by that oxygenate blender, or one sample every six weeks, whichever is more frequent; or

(2) In the case computer-controlled in-line blending is not used, a rate of not less than one sample per each fifty occasions RBOB and oxygenate are blended in a truck by that oxygenate blender, or one sample every two weeks, whichever is more frequent; and

(D) This increased frequency shall continue until the results of ten consecutive samples and tests indicate the gasoline complies with applicable standards, at which time the frequency may revert to the original frequency.

[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]

### § 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