

## Environmental Protection Agency

## § 80.365

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) *Party required to conduct quality assurance testing.* The quality assurance program under paragraph (c) of this section shall be conducted by the importer. In the alternative, this testing may be conducted by an independent laboratory that meets the criteria under § 80.65(f)(2)(iii), provided the importer receives, no later than 21 days after the sample was taken, copies of all results of tests conducted.

(e) *Assignment of batch numbers.* The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.365, and reporting under § 80.370.

(f) *EPA inspections of terminals.* EPA inspectors or auditors, and auditors conducting attest engagements under § 80.415, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) *Certified Sulfur-FRGAS.* This section does not apply to Certified Sulfur-FRGAS.

(h) *Reporting requirements.* Any importer who elects to comply with the alternative standards in paragraph (a) of this section shall comply with the following requirements:

(1) All importer recordkeeping and reporting requirements under §§ 80.365 and 80.370, except as provided in paragraph (h)(2) of this section.

(2) An importer who elects to comply with the alternative standards in paragraph (a)(2) of this section must certify in the annual report whether it is in compliance with the applicable per-gallon batch standard set forth in paragraph (a)(2) of this section, in lieu of providing the information required by § 80.370(a) regarding annual average sulfur content and compliance with the average standard under § 80.195.

(i) *Effect of noncompliance.* If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline sulfur average and per-gallon cap standards in § 80.195 or § 80.216, as applicable. Additionally, if any requirement is not met, EPA may notify the importer of the violation and, if the requirement is not fulfilled within 10 days of notification, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.330.

[38 FR 1255, Jan. 10, 1973, as amended at 68 FR 57820, Oct. 7, 2003]

### § 80.355 [Reserved]

#### RECORDKEEPING AND REPORTING REQUIREMENTS

### § 80.360 [Reserved]

#### § 80.365 What records must be kept?

(a) *Records that must be kept.* Beginning January 1, 2004, any person who produces, imports, sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, shall keep records that contain the following information:

(1) The product transfer document information required under §§ 80.77, 80.106, 80.210 and 80.219; and

(2) For any sampling and testing for sulfur content required under this subpart:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the test;

(iii) The results of the test as originally printed by the testing apparatus, or where no printed result is produced, the results as originally recorded by the person who performed the test; and

(iv) Any record that contains a test result for the sample that is not identical to the result recorded under paragraph (a)(2)(iii) of this section.

(b) *Additional records that refiners and importers must keep.* Beginning January 1, 2004, or January 1 of the first year allotments or credits are generated

## § 80.365

## 40 CFR Ch. I (7–1–08 Edition)

under § 80.275 or § 80.305, whichever is earlier, any refiner for each of its refineries, and any importer for the gasoline it imports, shall keep records that include the following information:

(1) For each batch of gasoline produced or imported:

(i) The batch volume;

(ii) The batch number assigned under § 80.65(d)(3) and the appropriate designation under paragraph (b)(1)(i) of this section; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(iii) The date of production or importation; and

(iv) If appropriate, the designation of the batch as GPA gasoline under § 80.219, California gasoline under § 80.375, exempt gasoline for research and development under § 80.380, or for export outside the United States.

(2) Information regarding credits and allotments, separately kept for credits and for allotments; separately kept according to the year of creation for the credits and for the allotments; and for credit generation or use starting in 2004, separately kept for GPA gasoline and other gasoline. Information shall be kept separately for different types of allotments and credits generated under §§ 80.275(e)(1), 80.275(e)(2), 80.305 and 80.310:

(i) The number in the refiner's or importer's possession at the beginning of the averaging period;

(ii) The number generated;

(iii) The number used;

(iv) If any were obtained from or transferred to other parties, for each other party its name, its EPA refiner or importer registration number, and the number obtained from, or transferred to, the other party;

(v) The number that expired at the end of the averaging period;

(vi) The number of allotments, by type, that were converted into credits under § 80.275(e);

(vii) The number in the refiner's or importer's possession that will carry

over into the subsequent averaging period; and

(viii) Contracts or other commercial documents that establish each transfer of credits and allotments from the transferor to the transferee.

(3) The calculations used to determine the applicable refiner baseline under § 80.250 or § 80.295.

(4) The calculations used to determine compliance with the applicable sulfur average standards of § 80.195, § 80.216, § 80.240, or § 80.270.

(5) The calculations used to determine the number of credits or allotments generated under § 80.305, § 80.310 or § 80.275.

(6) The calculations used to determine any applicable adjusted cap standard under § 80.195(d).

(7) A copy of all reports submitted to EPA under § 80.370.

(8) In the case of parties who process transmix, records of any sampling and testing required under § 80.213.

(c) *Additional records importers must keep.* Any importer shall keep records that identify and verify the source of each batch of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported and demonstrate compliance with the requirements for importers under § 80.410(o).

(d) *Length of time records must be kept.* The records required in this section shall be kept for five years from the date they were created; except that:

(1) *Transfers of credits and allotments.* Records relating to credit and allotment transfers, except as provided in paragraph (d)(2) of this section, shall be kept by the transferor for 5 years from the date the credits or allotments are transferred, and shall be kept by the transferee for 5 years from the date the credits or allotments were transferred, used or terminated, whichever is later.

(2) *Early credits and allotments.* (i) Where the party generating the credits or allotments does not transfer the credits or allotments, records must be kept for 5 years from the date of creation, use, or termination, whichever is later.

(ii) Where early credits or allotments are transferred, records relating to such credits or allotments shall be kept by both parties for 5 years from the date the credits or allotments were

## Environmental Protection Agency

## § 80.370

transferred, used, or terminated, whichever is later.

(e) *Make records available to EPA.* On request by EPA the records required in paragraphs (a), (b) and (c) of this section shall be provided to the Administrator's authorized representative. For records that are electronically generated or maintained the equipment and software necessary to read the records shall be made available, or if requested by EPA, electronic records shall be converted to paper documents which shall be provided to the Administrator's authorized representative.

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40184, June 12, 2002; 71 FR 31964, June 2, 2006]

### § 80.370 What are the sulfur reporting requirements?

Beginning with the 2004 averaging period, or the first year credits or allotments are generated under § 80.275 or § 80.305, whichever is earlier, and continuing for each averaging period thereafter, any refiner or importer shall submit to EPA annual reports that contain the information required in this section, and such other information as EPA may require.

(a) *Refiner and importer annual reports.* Any refiner, for each of its refineries, and any importer for the gasoline it imports, shall submit a report for each calendar year averaging period that includes the following information, and in the case of a refiner or importer producing or importing both GPA gasoline and other gasoline, the information shall be separately reported:

(1) The EPA importer, or refiner and refinery facility registration numbers;

(2) The applicable baseline, average standard, and adjusted cap standard as follows:

(i) For the years 2000 through 2003, the applicable baseline under § 80.250 or § 80.295.

(ii) For the 2004 averaging period and subsequent averaging periods:

(A) All applicable average standards under § 80.195, § 80.216, § 80.240 or § 80.270;

(B) All applicable adjusted cap standards under § 80.195(d), with the 2005 report identifying both the 2004 and 2005 applicable adjusted cap standards;

(3) The total volume of gasoline produced or imported;

(4) The annual average sulfur level of the gasoline produced or imported;

(5) The annual average sulfur level after inclusion of any credits and allotments;

(6) Information, separately provided, for credits and allotments, and separately by year of creation, as follows:

(i) The number of credits and allotments at the beginning of the averaging period;

(ii) The number of credits and allotments generated;

(iii) The number of credits and allotments used;

(iv) If any credits or allotments were obtained from or transferred to other parties, for each other party its name and EPA refiner or importer registration number, and the number of credits or allotments obtained from or transferred to the other party;

(v) The number of credits and allotments that expired at the end of the averaging period;

(vi) The number of credits and allotments that will carry over into the subsequent averaging period; and

(vii) The number of each type of allotments converted to credits;

(7) For each batch of gasoline produced or imported during the averaging period:

(i) The batch number assigned under § 80.65(d)(3) and the appropriate designation under § 80.365; except that if composite samples of conventional gasoline representing multiple batches produced subsequent to December 31, 2003, are tested under § 80.101(i)(2) for anti-dumping compliance purposes, for purposes of this subpart a separate batch number must be assigned to each batch using the batch numbering procedures under § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch; and

(iv) The sulfur content of the batch as determined under § 80.330; and

(v) For any batch of small refiner gasoline produced by any refinery with an adjustment of its per-gallon cap standard under § 80.271(a), the number of sulfur credits or allotments required under paragraph (d)(1) of this section, the number of credits or allotments