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**RFG/Anti-Dumping  
Questions and Answers  
August 29, 1994**

Fuels and Energy Division  
Office of Mobile Sources  
U.S. Environmental Protection Agency

## **RFG/Anti-Dumping Questions and Answers, August 29, 1994**

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through August 15, 1994, concerning the manner in which the EPA intends to implement and assure compliance with the reformulated gasoline and anti-dumping regulations at 40 CFR Part 80. This document was prepared by EPA's Office of Air and Radiation, Office of Mobile Sources, and Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Air Enforcement Division.

Regulated parties may use this document to aid in achieving compliance with the reformulated gasoline (RFG) and anti-dumping regulations. However, this document does not in any way alter the requirements of these regulations. While the answers provided in this document represent the Agency's interpretation and general plans for implementation of the regulations at this time, some of the responses may change as additional information becomes available or as the Agency further considers certain issues.

This guidance document does not establish or change legal rights or obligations. It does not establish binding rules or requirements and is not fully determinative of the issues addressed. Agency decisions in any particular case will be made applying the law and regulations on the basis of specific facts and actual action.

While we have attempted to include answers to all questions received by August 15, 1994, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document will be answered in a subsequent document. Questions that merely require a justification of the regulations, or that have previously been answered or discussed either in a previous Question and Answer document or the Preamble to the regulations have been omitted.

### **Topics Covered**

Baselines	California Enforcement Exemptions
Sampling and Testing	Anti-Dumping Requirements
RFG General Requirements	Test Tolerances
Independent Sampling and Testing	Transition Issues
Compliance on Average	Downstream Blending Issues
Downstream Oxygenate Blending	Importer Issues
Renewable Oxygenates	
Registration, Recordkeeping, and Reporting	

Product Transfer Documentation

## BASELINES

1. **Question:** When will the approvals for an individual refiner's baseline be completed by EPA? It is anticipated that in early October 1994, RFG will be produced and shipped to initiate transition prior to the December 1, 1994 compliance date. Timing of EPA's response to this issue is critical as it is our understanding according to the Q&A document that any product produced not in compliance with the approved baseline will be in violation.

**Answer:** As stated in answer to question IV-C-12 of the July 1, 1994 Question and Answer Document, a party whose baseline has not been approved by EPA by the time it begins producing RFG is responsible for meeting the baseline as ultimately approved by EPA. EPA cannot state with certainty when approvals for individual refiners' baselines will be complete. In the interim, EPA believes that refiner's that have complied with the regulations by submitting their baselines in a timely manner should have a good grasp of what their actual baseline will be. Accordingly, these refiners may commence production assuming that the baseline submitted for approval will be their individual baseline. In the event that there is any discrepancy between the refiner's submitted baseline certification and the actual baseline approved by EPA, the refiner should have the opportunity to achieve compliance on average during the whole of the 1994 through 1995 averaging period.

## SAMPLING AND TESTING

1. **Question:** We believe that computer controlled sequential blending of oxygenates at the rack is at least as accurate as computer controlled in line blending. Is sequential blending of oxygenates at the rack considered sufficiently equivalent to computer in line blending to allow the sampling and testing rates under § 80.69(a)(7)(i)(B) for in line blending?

**Answer:** For purposes of § 80.69, computer controlled sequential blending is considered to be a form of computer controlled in line blending, and qualifies for the sampling and testing rates applicable to computer controlled oxygenate blending under §§ 80.69(a)(7)(i)(B)(2) and (e)(2)(ii)(B), provided that the computer controlled sequential blender automatically meters the proper volumes of RBOB and oxygenate into each truck compartment without requiring an operator to separately specify the RBOB volume and oxygenate volume for each truck or truck compartment. The fact that the blend is carried out with the help of computer technology provides an additional level of oversight over non-computer controlled splash blending. This extra margin of confidence is the reason for the reduced sampling frequency where computer controlled in line blending is used.

One concern with sequential blending is whether or not the resulting splash blend will be homogeneous. This can also be a concern for in line blending if the pumping rates of the blendstocks are not consistent throughout the entire blend. For example, if oxygenate is added last in a sequential blend, or if the oxygenate addition of an in line blend finishes at a rate greater

than the target ratio, then portions of the tank compartment will most likely be non-homogeneous.

In either case, sampling can be compromised by the possibility of an unmixed blend. To avoid this problem it is recommended that oxygenate be added first in sequential blends, and that in line blends are pumped evenly, or pumped such that the oxygenate addition finishes before the RBOB.

2. **Question:** There may be situations where the truck sampling methods required by § 80.69 would be difficult to accomplish. Will EPA consider alternative approaches to sampling the gasoline produced through blending of oxygenate and RBOB in trucks?

**Answer:** Samples of RFG produced by blending RBOB and oxygenate in trucks should be collected from the retail tank if appropriate under § 80.69(e)(2)(i)(B), and from the truck compartment when retail tank sampling is not appropriate.

EPA unaware of sampling methods for truck blended RFG, other than those specified in § 80.69, that would ensure the oxygenate blending with RBOB is being properly performed. For example, a quality assurance program consisting of meter readings and RBOB quality testing at the distributor level would not ensure that RBOB and oxygenate are consistently mixed in the proper proportions. As a result, a quality assurance program must use samples of RFG produced subsequent to the addition of oxygenate.

## **RFG GENERAL REQUIREMENTS**

1. **Question:** Public terminals that "refine" and "blend" RFG, RBOB or conventional gasoline as defined in the RFG rules at 40 CFR Part 80, and obtain agreements from their customers to comply with the refiner/blender requirements of the rule, will not separately need to register with EPA. It is my understanding that terminals in such situations must not register. Is my understanding correct?

**Answer:** No. In a situation in which more than one party fits the definition of a refiner or oxygenate blender under the regulations, each such party is subject to the requirements under the regulations, including registration requirements, and is liable for any violations that occur at the refinery or oxygenate blending operation. Where, for a particular operation, more than one party fits the definition of refiner or oxygenate blender, the parties may agree that one party will register. There is no prohibition against the terminal registering in this situation. See also the answer to Question 11, Section VI.A., of the July 1, 1994 "Reformulated Gasoline and Anti-Dumping Questions and Answers" document for further discussion of this situation.

## **INDEPENDENT SAMPLING AND TESTING**

1. **Question:** Is a laboratory considered to be "independent" under the independent sampling and testing requirements and the gasoline quality survey provisions, if the company that operates the laboratory also is a refiner who produces conventional gasoline only?

**Answer:** The independent sampling and testing requirements of § 80.65(f)(2)(iii) and the gasoline quality survey provisions of § 80.68(c)(13)(i) each require that the sampling and testing must be carried out by a laboratory that is independent of any refiner or importer. Section 80.65(f)(2)(iii)(A) specifies that in order to be independent the laboratory "shall not be operated by any refiner..." and § 80.68(c)(13)(i)(A) specifies that in order to be independent "[t]he surveyor shall not be an employee of any refiner or importer."

Both of these regulatory provisions relate to RFG only, however, and have no application to refiners or importers who produce or import conventional gasoline only, or to areas that are outside any RFG covered area where conventional gasoline may be sold. As a result, EPA interprets the cited regulatory provisions as referring only to refiners or importers who produce or import RFG. As a result, a refiner or importer who produces or imports conventional gasoline only, and who produces or imports no RFG or RBOB, could be considered independent for purposes of the independent sampling and testing, and gasoline quality survey, requirements.

This interpretation of "independence" would not apply in the case of a corporation if any RFG is produced or imported anywhere within a common corporate structure. Thus, if a parent corporation has a subsidiary corporation that is refiner or importer that produces or imports RFG, no other subsidiary corporation of that parent could be considered "independent."

2. **Question:** What procedures should independent labs use to identify the samples for analysis under the 10% independent analysis option? What samples will EPA want to receive from independent labs?

**Answer:** Please see the following Protocol.

REFORMULATED GASOLINE PROGRAM  
INDEPENDENT SAMPLING AND TESTING REQUIREMENTS  
PROTOCOL

FOR USE BY INDEPENDENT LABS IN SELECTING SAMPLES FOR ANALYSIS UNDER THE 10% INDEPENDENT ANALYSIS OPTION, AND FOR IDENTIFYING SAMPLES TO SHIP TO EPA.

**1.0 General Instructions.**

1.1 This protocol constitutes EPA identification under § 80.65(f)(1)(ii)(B) of samples that must be analyzed for refiners and importers using the 10% independent analysis option of § 80.65(f)(1)(ii), and must be followed separately for each refinery or importer for which the independent lab is being used to fulfill the 10% independent analysis option. This protocol also constitutes EPA identification under § 80.65(f)(3)(iv) of samples that independent labs must ship to EPA .

1.2 In the case of the 10% independent analysis option, this protocol must be used to select the samples for analysis for each two week period. Each two-week period begins on Sunday night at midnight, and lasts for the subsequent two weeks. The first two-week period begins at midnight on August 6, 1994, the second two-week period begins at midnight on August 20, 1994, etc.

1.3 This protocol may be replaced at any time by EPA with different instructions for selecting samples for analysis under the 10% independent analysis option, or for shipping samples to EPA.

1.4 EPA may issue special instructions for selecting samples for analysis or shipping to EPA for any specific refiner, refinery, importer, or independent lab that differ in whole or in part from the instructions contained in this protocol, and if such special instructions are issued they must be followed instead of the instructions contained in this protocol.

1.5 Definitions:

RFG - reformulated gasoline  
RBOB - reformulated gasoline blendstock for oxygenate blending

**2.0 Identify Samples for the Current Analysis Cycle.**

2.1 Identify each sample of RFG or RBOB collected during the preceding two-week period, and the refiner or importer assigned batch identification number for each sample.

2.2 Add any samples carried over from a prior analysis cycle, from 3.2 and 3.4.1.

2.3 Order the samples from the preceding two-week period, plus any carry over samples, in chronological order using the batch identification number for each sample.

### **3.0 Determine the Number of Samples to be Analyzed.**

3.1 The number of samples that must be analyzed for the current analysis cycle is the number of samples identified under step 2.0 that is evenly divisible by ten.

3.2 Any remainder from this division is the number of samples that must be carried over to the subsequent analysis cycle. Any carry over samples must be those with the largest batch identification numbers.

For example, if the number of samples identified under step 2.0 is thirty seven, with batch numbers 4321-54321-95-002534 through 4321-54321-95-002570, the number of samples that must be analyzed in the current analysis cycle is three, and seven samples must be carried over to the subsequent analysis cycle. The specific samples that must be carried over are those seven with the largest batch identification numbers, or samples 4321-54321-95-002564 through 4321-54321-95-002570.

3.3 To the extent any sample carry over would result in a sample being retained by the independent lab for more than 30 days, this protocol constitutes EPA's request under § 80.65(f)(3)(ii) to retain the sample for more than 30 days. This additional sample retention request is for the length of time until the sample is not carried over to a subsequent analysis cycle, but for a maximum of 180 days.

### **3.4 Case Where Number of Samples is Less than Ten**

3.4.1 If the number of samples identified under step 2.0 is less than ten, then all samples should be carried over to the subsequent analysis cycle.

3.4.2 If, however, the number of samples identified under step 2.0 is less than ten, and any sample carry over would result in a sample being retained for more than 180 days, then one sample must be analyzed from the number, and none of the samples would be carried over to the subsequent analysis cycle.

### **4.0 Identify Which Samples to Analyze**

4.1 Identify the beginning point for using the Random Number Table at 4.2 for the current analysis cycle.

4.1.1 Identify the last two digits from the closing point for the Dow Jones Industrial Average as reported in the Wall Street Journal for the first day the New York Stock Exchange is open following the close of the preceding two-week period.

For example, for the two-week period ending at midnight on Sunday, August 20, the relevant two digits would be the last two digits for the close for the Dow Jones Industrial Average for Monday, August 21, as reported in the Wall Street Journal for Tuesday, August 22. If this Dow Jones Industrial Average close is 3,741.06, the relevant two digits would be 06.

4.1.2 The beginning point for the Random Number Table at 4.2 for the current analysis cycle is the row number (from Column A of Table 4.2) that corresponds to the number identified under 4.1.1.

Using the example from 4.1.1, the applicable row number would be 06, and the first random number would be 54.

## 4.2 Random Number Table

Column		Column		Column	
<u>A</u>	<u>B</u>	<u>A</u>	<u>B</u>	<u>A</u>	<u>B</u>
01	32	40	43	79	51
02	70	41	83	80	57
03	38	42	46	81	71
04	94	43	33	82	69
05	73	44	62	83	53
06	54	45	24	84	89
07	18	46	91	85	49
08	48	47	81	86	58
09	25	48	47	87	34
10	64	49	39	88	28
11	37	50	97	89	52
12	95	51	36	90	13
13	04	52	50	91	88
14	90	53	87	92	14
15	61	54	17	93	96
16	60	55	02	94	20
17	27	56	78	95	05
18	22	57	92	96	82
19	77	58	31	97	01
20	44	59	26	98	66
21	86	60	65	99	98
22	41	61	29		
23	76	62	79		
24	56	63	07		
25	21	64	11		
26	74	65	55		
27	45	66	68		
28	75	67	40		
29	19	68	67		
30	23	69	84		
31	15	70	93		
32	80	71	99		
33	12	72	30		
34	16	73	42		
35	35	74	59		
36	03	75	09		
37	08	76	72		
38	06	77	10		
39	85	78	63		

4.3 For each sample for the current analysis cycle under 2.0, excluding any samples carried over to the subsequent analysis cycle under 3.2 or 3.4.1, identify the last two digits of the batch identification number.

This process is illustrated in the following table:

If the batch number is:	The last two digits are:
4321-54321-95-002533	33
4321-54321-95-002518	18

4.4 Compare the two digit number from Column B of the Random Number Table at the beginning point identified under 4.1.2 (the first random number) with each of the two digit sample numbers identified under 4.3.

4.5 If the first random number matches any sample number, this sample is identified as a sample for analysis. If the random number matches more than one sample number, only the sample with the lowest batch identification number is identified as a sample for analysis.

4.6 If the first random number does not match any sample number, then move to the next number in the Random Number Table, and repeat the process described under 4.5.

In the example under 4.3, there is no match for the first random number (54), but there is a match for the second random number (18), and sample number 4321-54321-95-002518 would be identified for analysis.

4.7 Continue this process until the number of samples identified for analysis equals the number under 3.1 or 3.4.2.

## **5.0 Analysis of Identified Samples**

5.1 Proceed to analyze each sample identified under 4.0 as specified under § 80.65(f)(1)(ii)(C).

5.2 If a sample to be analyzed is of RBOB, the sample first must be blended with the applicable amount and type of oxygenate. The following chart specifies this oxygenate blending with RBOB:

<u>RBOB Type</u>	<u>Oxygenate Type</u>	<u>Oxygen Volume</u>
Any-Oxygenate	Ethanol	2.0 wt%
Ether-Only	MTBE	2.0 wt%
Any-Renewable-Oxygenate	Ethanol	2.0 wt%
Renewable-Ether-Only	ETBE	2.0 wt%
Non-VOC-Controlled-Renewable-Ether-Only	ETBE	2.0 wt%
Refiner-Specified	<sup>1</sup>	<sup>2</sup>

This requirement to blend RBOB with oxygenate applies to refiners and importers who are using both the 10% independent analysis option under § 80.65(f)(1)(ii) and the 100% independent analysis option under § 80.65(f)(1)(i).

## 6.0 Shipment of Samples to EPA

### 6.1 Quality Assurance Samples

For purposes of quality assurance oversight, a portion of certain samples must be sent to EPA, under § 80.65(f)(3)(iv), at the frequencies specified in this item 6.1. This requirement applies to refiners and importers who are using both the 10% independent analysis option under § 80.65(f)(1)(ii) and the 100% independent analysis option under § 80.65(f)(1)(i). EPA may specify a different frequency for sending quality assurance samples to EPA for any refiner, refinery, importer, or independent lab, and if such different frequency is specified it must be followed.

#### 6.1.1 Refiners and Importers Using the 10% Independent Analysis Option

6.1.1.1 In the case of samples identified for analysis under 4.0, for each thirty-third sample that is analyzed for each refinery or importer a portion of the sample must be sent to EPA.

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<sup>1</sup> The oxygenate specified in the refiner's instructions, or if more than one oxygenate is allowed, from the following list of oxygenates the first that is allowed by the refiner's instructions: ethanol, MTBE, ETBE, any other specified oxygenate.

<sup>2</sup> The volume specified in the refiner's instructions, or if a range is specified, the minimum vol% oxygenate allowed.

6.1.1.2 In the case of samples that are not identified for analysis under 4.0, each thirty-third sample that is collected for each refinery or importer but that is not analyzed by the independent lab must be sent to EPA.

### **6.1.2 Refiners and Importers Using the 100% Independent Analysis Option**

For every thirty-third sample that is analyzed for each refinery or importer, a portion of the sample must be sent to EPA.

### **6.2 Samples That Violate Applicable Standards**

6.2.1 In the case of refiners or importers who are using the 100% independent analysis option, a portion of each sample that violates an applicable per-gallon standard must be sent to EPA.

6.2.2 The applicable standards are those specified under § 80.41. In the case of parameters being met on a per-gallon basis, the per-gallon standards are the applicable standards. In the case of parameters being met on an average basis, the per-gallon minimums and maximums are the applicable standards.

### **6.3 Shipping of Samples**

6.3.1 Each sample sent to EPA must be sealed in containers and transported in accordance with the procedures specified in Appendix D to 40 CFR Part 80, and identified with the independent lab's name and registration number and the sample information specified in § 80.65(f)(3)(i).

6.3.2 The quantity of sample that must be sent is: in the case of samples that have been analyzed by the independent lab, the entire volume remaining following the laboratory analysis which should be a minimum of one pint; and in the case of samples that have not been analyzed by the independent lab, the entire volume that is collected by the independent lab, or a minimum of one quart.

6.3.3 Samples identified for shipping to EPA under 6.1 or 6.2 must be sent to EPA via an overnight package service to:

United States Environmental Protection Agency  
Motor Vehicle and Fuels Emissions Laboratory  
Fuels and Chemicals Analysis Branch  
2565 Plymouth Road  
Ann Arbor, Michigan 48105  
(313) 668-4200

## **COMPLIANCE ON AVERAGE**

1. **Question:** Can exports of high olefins, high benzene, and/or nil oxygen gasolines from the U.S. generate credits for the exporter?

**Answer:** No. Section 80.67(g)(6) provides that oxygen and benzene credits are generated if the actual total for the oxygen standard is greater than the compliance total, or if the actual total for the benzene standard is less than the compliance totals. Exported gasoline is not included in compliance calculations, and, as a result, has no impact on credit creation.

2. **Question:** Will a foreign refiner or blender, or an importer of RFG produced overseas, be given some kind of credit for plant emissions outside the United States?

**Answer:** No. The RFG regulations as promulgated in December 1994 do not extend to foreign refineries.

3. **Question:** Why must oxygen and benzene credits pass only from creator to user? Why can't a blender or importer buy credits in advance as a safety measure, and then sell or resell them if/when (within the averaging period) it is established that it has performed better than expected?

**Answer:** The regulations do not provide for the reselling of credits. However, there may be ways for businesses to provide some flexibility, such as options to buy credits which extend to the end of the averaging period.

## **DOWNSTREAM OXYGENATE BLENDING**

1. **Question:** According to § 80.69(e)(ii)(A) or (B), an oxygenate blender is required to sample and test at a specific rate of blending "occasions." Assume that the oxygenate blender blends the oxygenate in trucks by a computer controlled sequential blender. Is each truck load an "occasion?" Is a truck with multiple compartment grades more than one "occasion?"

**Answer:** The term "occasion" is used in context to refer to each time RBOB and oxygenate are blended in a truck. In the example given, the product in each truck or in each compartment representing a grade would be the result of a blending "occasion."

2. **Question:** Are there different RBOBs for ethanol than for MTBE? Kindly list the types of RBOBs with all the acceptable oxygenates or ethers for each RBOB.

**Answer:** Yes. The generic RBOB types are as follows: "Any oxygenate," "Any renewable oxygenate," "Any ether," "Any renewable ether," and "Non-VOC controlled renewable ether only." There are several legal oxygenates which may be blended with the various types of RBOB. Please refer to the RFG and renewable oxygenate regulation preambles for a detailed

discussion. For example, it would be appropriate to blend ethanol with "any oxygenate" or "any renewable oxygenate" RBOB, but inappropriate to blend ethanol with "Any ether" or "Any renewable ether" or "Non-VOC controlled renewable ether only" RBOBs. MTBE may appropriately be blended with "any oxygenate," "ether only," (and if the MTBE is from a renewable source "Any renewable oxygenate" or "Non-VOC controlled renewable ether only" RBOB).

3. **Question:** Is tertiary butyl alcohol (TBA) an acceptable alternative oxygenate to MTBE?

**Answer:** Tertiary butyl alcohol may be blended in amounts permitted under its section 211(f) waiver. There are several oxygenates available other than the two most common, MTBE and ethanol, and these oxygenates may be legally used if blended in the type and amount specified under EPA's "substantially similar" rule and any section 211(f) waiver that may apply. Parties needing further information about the legality of a particular oxygenate should contact the Field Operations and Support Division Fuels Team at (202) 233-9050.

4. **Question:** If a refiner of RBOB elects to use "worst case" oxygenate blending assumptions to comply with the RFG regulations in lieu of engaging in quality assurance sampling and testing at the blender's blending facility, does the refiner have a duty to sample or test the RBOB or the end-product RFG at any point after the RBOB is transferred to the oxygenate blender?

**Answer:** A refiner of RBOB that is not designated as refiner-specified (i.e., is designated as one of the "generic" categories), and who uses the oxygenate blending assumptions specified at § 80.69(a)(8), is not required to conduct quality assurance sampling and testing over the oxygenate blenders who use that RBOB to produce RFG.

5. **Question:** If an RBOB refiner elects to engage in a quality assurance program at the blender's blending facility per the terms of a contract with the blender, must the refiner sample and test the RBOB as it is received at the blender's facility? If so, how often must sampling and testing be performed? Should sampling and testing be done at the blender's facility prior to shipment, or after the retail outlet accepts delivery?

**Answer:** The refiner's quality assurance sampling and testing, under § 80.69(a)(7) must be of the RFG produced at an oxygenate blending facility, and not of the RBOB. The rates for testing are specified in § 80.69(a)(7). With respect to when sampling and testing should be conducted, refer to § 80.69(e)(2)(i).

6. **Question:** If an RBOB refiner elects to engage in a quality assurance program at the blender's blending facility per the terms of a contract with the blender, must the refiner sample and test the

end-product RFG that is shipped from the blender to retail outlets? If so, how often must sampling and testing be performed?

**Answer:** The refiner should sample and test the RFG that is produced at the blender's facility. In the case of truck blended oxygenate, this sampling should either be from the truck after mixing, or from the retail outlet following the procedures specified at § 80.69(e)(2)(i)(B). The frequency of sampling and testing is specified at § 80.69(a)(7)(i)(B).

7. **Question:** If a refiner of RBOB elects to engage in a quality assurance sampling and testing at the non-proprietary blender's facility by contractual provision, can the refiner contract for a third party to perform the quality assurance sampling and testing? If so, can the third party contract to assume the refiner's liability in case the quality assurance program is deficient or ineffective and leads to violations of the applicable standard?

**Answer:** The refiner could meet the quality assurance sampling and testing requirement through sampling and testing carried out by a third party, although this third party could not be the oxygenate blender. The refiner would be liable, however, for any failure to meet the regulatory requirements, and any contractual agreement between the refiner and the third party would have no effect on the refiner's potential liability.

## RENEWABLE OXYGENATES

1. **Question:** With respect to the potential use of ethanol as a renewable oxygenate (to be used at some level) will this requirement be applicable to refiners outside the United States but importing into the United States?

**Answer:** The renewable oxygenate requirement is applicable to refiners and importers of RFG and RBOB. In the case of a foreign refiner, the importer would be responsible for ensuring that all gasoline he imports contains a volume of renewable oxygenate such that the RFG or RFG produced using RBOB, on average, has an average oxygen for renewable oxygenate equal to or greater than 0.30 weight % for the averaging period ending December 31, 1995 and 0.60 weight % for averaging periods beginning January 1, 1996. These renewable oxygenate requirements do not apply to foreign refiners.

2. **Question:** Can a refiner with more than one refinery transfer renewable oxygen credits from one of its refineries to another of its refineries?

**Answer:** Yes, provided that the credits are created in accordance with § 80.83(d)(2)(iv) and transferred in accordance with § 80.67(h).

3. **Question:** Can a company which is both a refiner and importer transfer renewable oxygenate credits from its importer activities to its refineries?

**Answer:** Yes, provided that the credits are created in accordance with § 80.83(d)(2)(iv) and transferred in accordance with § 80.67(h).

4. **Question:** Please explain the differences between oxygen credits and renewable oxygenate credits with regard to where credits may be created, how credits are created, and who owns any credits that are created.

**Answer:**

### **Oxygen Standard/Credits**

Under § 80.67(f), the oxygen standard must be met by refiners, importers, and oxygenate blenders for the RFG these parties produce or import. Oxygen credits are created if the refiner, importer, or oxygenate blender designates the RFG being produced or imported as meeting the oxygen standard on average, and if the average wt% oxygen of the RFG produced or imported over the averaging period exceeds the applicable average oxygen standard.<sup>3</sup> Any oxygen credits which are generated accrue to the refiner, importer, or oxygenate blender who produced or imported the RFG. Oxygen credits may be transferred from the party who created the credits to any other party for use in achieving the oxygen standard on average.

In the case of RBOB, under § 80.67(f)(4) the oxygenate blender who produces RFG by combining RBOB with oxygenate is responsible for meeting the oxygen standard for the RFG produced. Under § 80.67(f)(3) a refiner or importer of RBOB is not responsible for meeting the oxygen standard, and as a result does not include RBOB in the compliance calculations for oxygen.

Under § 80.69(b)(4) an oxygenate blender may meet the oxygen standard on average (as opposed to per-gallon) only if the oxygenate blender samples and tests each batch of RFG produced, assigns a batch number to each batch, and meets the annual attest requirements. In addition, under §§ 80.74(c) and (d) an oxygenate blender who meets the oxygen standard on average must keep records of compliance calculations and the specifics of each batch of RFG produced, and under §§ 80.75(a) and (f) must report quarterly on each batch of RFG produced, and annually on the average oxygen compliance. Thus, in order to meet the oxygen standard on

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<sup>3</sup> The oxygen standard must be met separately for three categories of RFG, specified in § 80.67(f)(2), and oxygen credits must be transferred in four separate categories, specified in § 80.69(h)(1)(v)(A). These separate categories of oxygen averaging and oxygen credits are discussed in the preamble to the Final Rule, at 59 FR 7772 (February 16, 1994).

average and to be able to generate any oxygen credits, an oxygenate blender who blends oxygenate and RBOB in trucks must separately sample and test each truck batch for oxygen content and meet the other requirements specified above.

A truck oxygenate blender who meets the oxygen standard per-gallon, on the other hand, must conduct a program of periodic sampling and testing (and not every-batch sampling and testing) of the RFG produced through the oxygenate blending operation, as specified at § 80.69(e)(2). In addition, under § 80.74(d) such a per-gallon oxygenate blender must keep records of the oxygenate blending, and under § 80.75(l) must submit an annual report of the total gallons of RFG produced and a statement that each batch met the per-gallon oxygen standard.

The refiner or importer of RBOB must meet standards other than oxygen for RBOB, however, and must use an oxygenate type and volume to determine the levels of these other parameters for each batch of RBOB, as specified at § 80.69(a)(2). Under § 80.69(a)(8) refiners must assume ethanol is blended with any-oxygenate and any-renewable-oxygenate RBOB, that MTBE is blended with ether-only RBOB, and that ETBE is blended with any-renewable-ether RBOB. In each case, the refiner or importer must assume the volume of oxygenate blended is such that the resulting RFG will have an oxygen content of 2.0 wt%. Under §§ 80.69(a)(5) through (7) a refiner or importer may use the actual oxygenate blending rate for calculating the non-oxygen properties of RBOB if the refiner or importer has a contract with the oxygenate blender and carries out a quality assurance sampling and testing program over the oxygenate blending operation.

### **Renewable Oxygenate Standard/Credits**

Under § 80.83(b) the renewable oxygenate (ROXY) standard must be met by refiners and importers (and not by oxygenate blenders) for the RFG and RBOB these parties produce or import. The ROXY standard is only met on average (and not per-gallon), and ROXY credits are created if the average wt% oxygen from renewable oxygenate exceeds the applicable ROXY standard. Under § 80.83(d)(2)(iv) any ROXY credits which are generated as a result of oxygenate used to produce RFG or that is blended with RBOB accrue to the refiner or importer who produces or imports the RFG or RBOB. ROXY credits do not accrue to an oxygenate blender who produces RFG by blending RBOB with oxygenate.

A refiner or importer of RBOB may include ROXY oxygenate blended with the RBOB in ROXY compliance calculations if the RBOB is designated for blending with ROXY. Under § 80.83(c)(1)(iii) the refiner must assume ethanol is blended with any-renewable-oxygenate RBOB, and that ETBE is blended with renewable-ether-only or non-VOC-controlled renewable ether only RBOB. In either case, the refiner or importer must assume that 2.0 wt% oxygen from the oxygenate was blended. Under § 80.83(c)(1)(ii) a refiner or importer of RBOB may use the actual renewable oxygenate blending rate in the ROXY compliance calculation if the refiner or importer has a contract with the oxygenate blender and meets the requirements for a periodic (and not every batch) quality assurance sampling and testing program as specified in

§§ 80.69(a)(6) and (7). The volume of RFG produced using RBOB (which is included in the RFG portion of the refiner's or importer's compliance calculation) is determined in the same manner as for the refiner's or importer's non-oxygen standard calculations for RBOB, i.e., the volume of the appropriate oxygenate that results in 2.0 wt% oxygen for the RFG, or the actual volume of oxygenate if the refiner has a contract with and oversight over the oxygenate blender.

In summary, refiners and importers may create oxygen credits if they designate the RFG produced or imported (not including RBOB) at their refinery or import facility as meeting the oxygen standard on average, and the average wt% oxygen of the RFG produced or imported over the averaging period exceeds the applicable average oxygen standard. Oxygenate blenders may create oxygen credits if they produce RFG at their oxygenate blending facility by combining RBOB with oxygenate and designate the RFG produced as meeting the oxygen standard on average, and the average wt% oxygen of the RFG produced over the averaging period exceeds the applicable average oxygen standard. However, as discussed above, to meet the oxygen standard on average, an oxygenate blender who blends oxygenate and RBOB in trucks must separately sample and test each truck batch for oxygen content and meet the other requirements discussed above.

Renewable oxygenate credits (ROXY credits), on the other hand, may be created only by refiners and importers, and not oxygenate blenders. The ROXY standard is only met on average (and not per-gallon), and ROXY credits are created for the RFG and RBOB produced by the refiner or importer if the average wt% oxygen from renewable oxygenate exceeds the applicable ROXY standard. In the case of RBOB, however, a refiner must conduct a periodic program of quality assurance sampling and testing over the downstream oxygenate blending operation in order to claim credit for more than 2.0 wt% oxygen blended with the RBOB.

Both of these kinds of credits may be transferred only from the party who created the credits to any other party for use in achieving the oxygen standard on average, but this second party may not re-transfer the credits.

### **Example 1**

A Refiner produces RBOB designated as "any renewable oxygenate" which is shipped via pipeline to an RFG covered area, where the RBOB is blended with 10 vol% ethanol by an oxygenate blender who blends oxygenate in trucks. The refiner is responsible for meeting all standards except the oxygen standard for this RBOB, including the ROXY standard, and any ROXY credits that result from the refiner's overall production of RFG and RBOB accrue to the refiner.

The refiner must determine the parameter values for the RFG produced using the RBOB by preparing a laboratory blend of the RBOB with the volume of ethanol necessary for the RFG to have an oxygen content of 2.0 wt%, and analyzing this RFG for all the RFG parameters. The refiner must also assume this volume of ethanol for purposes of the RFG portion of the ROXY compliance calculation, and that 2.0 wt% renewable oxygen was used for the oxygen portion of

the ROXY compliance calculation. The refiner may not use 10 vol% ethanol in any of its compliance calculations.

The oxygenate blender of this RBOB is responsible for meeting the oxygen standard for the RFG produced using the RBOB. The oxygenate blender may meet the oxygen standard per-gallon, and must carry out a periodic program of quality assurance sampling and testing, at the rates specified in § 80.69(e)(2)(ii). The oxygenate blender may meet the oxygen standard on average, and generate oxygen credits if appropriate, only if the oxygenate blender meets the oxygen standard on average for all RFG produced over the entire averaging period. In order to meet the oxygen standard on average, the oxygenate blender must sample each truck batch of RFG produced and tests each sample for oxygen content, and meet the other requirements for averaging, including those for an attest engagement, record keeping, and quarterly and annual reporting.

### **Example 2**

A refiner produces RBOB designated as "refiner-specified" RBOB intended for 3.5 wt% oxygen from ethanol. The refiner is responsible for meeting all standards except the oxygen standard for this RBOB, including the ROXY standard. This RBOB is transported via pipeline to an oxygenate blender who blends oxygenate with RBOB in trucks, and with whom the refiner has a contract that meets the requirements of § 80.69(a)(6). The oxygenate blender adds 10 vol% ethanol, which given the density of the RBOB and ethanol, and the purity of the ethanol, results in 3.5 wt% oxygen in the RFG produced. The refiner carries out a periodic program of quality assurance sampling and testing in accordance with § 80.69(a)(7).

The refiner may compute the compliance calculations for all the non-oxygen standards for the RFG produced using the RBOB on the basis of 10 vol% ethanol, and may use 3.5 wt% oxygen from ethanol in the ROXY compliance calculations. Any ROXY credits that result from the refiner's overall RFG and RBOB production accrue to the refiner.

The oxygenate blender of this RBOB is responsible for meeting the oxygen standard for the RFG produced using the RBOB, and may meet the oxygen standard on average (and generate oxygen credits) only if the oxygenate blender meets the averaging requirements for oxygenate blenders, described in Example 1.

**5. Question:** A refiner sells an RBOB suitable for ethanol oxygenate blending to an oxygenate blender. The blender blends the ethanol with the RBOB in a storage tank to produce RFG, which subsequently goes out the rack to trucks. Who owns the renewable oxygen credits?

**Answer:** A refiner who produces RBOB receives the applicable renewable oxygenate credits that result from downstream blending. The requirement of the renewable oxygenate regulation is that a specified weight % of the refiner's (or importer's) gasoline meet the renewable oxygen requirement. If the refiner sells an "any renewable oxygenate" RBOB to a downstream blender

who then blends in ethanol, the refiner is permitted to assume that ethanol equalling 2.0 weight % oxygen has been blended. If the refiner sells a "refiner specified" RBOB and meets the oversight requirements at § 80.69(a)(6) and (7), the refiner may include the entire amount of oxygenate blended in its compliance calculations.

6. **Question:** A refiner and an oxygenate blender have an exchange agreement whereby the blender takes RBOB from the refiner and adds ethanol to produce RFG, and the refiner buys back the RFG which is loaded into the refiner's trucks at the blender's terminal facility. Who owns the renewable oxygen credit?

**Answer:** The refiner who produces RBOB receives any ROXY credits that result from downstream oxygenate blending.

7. **Question:** A refiner and blender have an exchange agreement whereby the blender takes RBOB from the refiner and adds ethanol to the RBOB to produce RFG, and loads the resulting RFG into the refiner's trucks, but in this case takes back regular (i.e. non-renewable) RFG, or even conventional gasoline, at another location. Who owns the renewable oxygen credit?

**Answer:** The refiner who produced RBOB receives any ROXY credits that result from downstream oxygenate blending.

8. **Question:** Refiner "A" sells RBOB intended for ethanol blending to Refiner "B" who subsequently buys and blends ethanol into the RBOB to make RFG. Does Refiner "A" have a renewable oxygen obligation on the barrels sold to Refiner "B?" Wouldn't the renewable oxygen obligation now be carried by Refiner "B?"

**Answer:** The standard applies to, and any ROXY credits go to, the refiner ("A") who produces the RBOB. This is not changed by the sale of the RBOB to another refiner ("B").

9. **Question:** Are ethanol credits generated only by blending with RBOB, or can ethanol be used to make conventional gasoline or gasohol (non-RFG) to create credits?

**Answer:** Renewable oxygen credits are generated only as a result of the oxygen content of RFG, or RFG produced for RBOB, and ROXY credits may not be generated for non-RFG.

10. **Question:** What mechanism does EPA envision would establish the price of ROXY credits?

**Answer:** The free market.

11. **Question:** Has EPA done any pricing analysis to identify the costs associated with the renewable oxygenate program?

**Answer:** EPA has prepared a Regulatory Impact Analysis (RIA), which is available through the TTN bulletin board. This RIA summarizes EPA's cost estimates.

12. **Question:** Are renewable oxygen credit brokers acceptable?

**Answer:** Under § 80.67(h)(1)(iv), RFG credits (including ROXY credits) may be transferred only from the credit creator to the credit user. As a result, a broker could not take title to ROXY credits. A broker could facilitate credit trades by bringing together credit creators and credit users.

### **REGISTRATION/RECORDKEEPING/REPORTING**

1. **Question:** The draft version (4/12/94) of the Batch Report for the Reformulated Gasoline and Anti-Dumping Program calls for reporting the oxygen content in weight (mass) percent and oxygenates by volume percent. Both the Simple and Complex models require oxygenate input as percent weight oxygen for compliance calculations. What value does EPA place on reporting oxygenates as volume percent?

**Answer:** The regulations require that oxygenate content (not oxygen content) of each oxygenate be measured and reported for each batch of gasoline (see §80.65(e)). The oxygenate content measured by a refiner or importer must match that measured by an independent laboratory within a certain volume percent range as per §80.65(e)(2)(i). Since the units specified by §80.65(e)(2)(i) are volume percent there is no choice but to report oxygenate content in those units.

2. **Question:** In filing company and facility registrations, if a parent corporation has several subsidiary corporations it desires to register and report to EPA under one company ID number, would it be permissible to register all of the facilities operated by the subsidiaries under only one of the corporations even though for legal and tax purposes they are regarded as separate entities under the umbrella of the one parent corporation? Would it be necessary to obtain a registration number for the parent corporation or could one of the subsidiary corporations take responsibility for compliance for all of the facilities?

**Answer:** In this situation the parent corporation should register for a company ID # and facilities operated by the subsidiary corporations should be registered as separate facilities but under the parent corporation's company ID #.

3. **Question:** Will common carriers be required to register their transport trucks as oxygenate blending facilities?

**Answer:** Normally, only the owner of the gasoline produced at an oxygenate blending operation must register as an oxygenate blender. If a common carrier blends gas in trucks that it owns it must meet all of the requirements for other oxygenate blenders. But see answer to Question 1 of the "General Requirements" section of this document.

If an oxygenate blender uses common carriers or its own trucks for splash blending it may register the entire fleet for any single covered area as a facility and indicate the office where the truck blending operations are coordinated as the blending facility. The office so registered must be at the lowest level at which coordination occurs and geographically closest to each designated RFG area.

4. **Question:** According to the RFG and anti-dumping provisions, a regulated party must keep records for as long as 5 years. Can the original documents, such as bills of lading, be transferred by a regulated party to micro fiche and allow the original records to be destroyed?

**Answer:** The regulations do not specify in what form records must be kept. A method of storage which faithfully reproduces records, like micro fiche recording, would be acceptable so long as means of referencing the information are kept on hand and operational for the entire five year retention period.

5. **Question:** Who is required to register for the Reformulated Gasoline and Anti-dumping Program?

**Answer:** Refiners and importers of conventional gasoline, reformulated gasoline or RBOB and oxygenate blenders producing reformulated gasoline by blending RBOB with oxygenates must register with EPA prior to producing or importing such products. Independent laboratories must register prior to being specified by refiners or importers on facility registrations.

## **PRODUCT TRANSFER DOCUMENTATION**

1. **Question:** If a purchased lot of certified RFG is combined with another lot of fungible certified RFG in a terminal, and a portion of the mixture is then sold to a third party, what form would the product transfer documentation take? Would it be necessary to convey documentation on a pro rata basis to all purchasers of the blended material?

**Answer:** There is no specific form or required format for the produce transfer document (PTD) information. It should be included on the documents used to memorialize the transfer of the fuel and should reflect the amount and type of RFG sold or transferred to the third party, as well as

the other information required in §80.77. Therefore, it would be necessary to provide PTD information to all purchasers of the blended material for the quantity of RFG that they are receiving custody or title of.

2. **Question:** We interpret question VI (I)(1) from the RFG and Anti-dumping Questions and Answers document of July 1, 1994 to require that a Product Transfer Document (PTD) must be provided to the transferee in an exchange transaction. Is this a correct interpretation? There are times when this exchange is instantaneous and the transferee has no ability to alter the product?

**Answer:** Yes, this is a correct interpretation. When any person transfers title or custody of any gasoline (with the exception of gasoline sold or dispensed at a retail outlet or wholesale purchaser-consumer for use in motor vehicles), the transferor must provide to the transferee the specific information pertaining to the fuel required in the product transfer documentation sections, regardless of the transferee's ability to alter the product.

3. **Question:** Assuming that PTD's are required for exchange transactions and the data could be electronically stored in a manner ensuring the security and integrity of the data, would it be sufficient to provide transferees with access to electronic PTD's if the PTD's contain the same data as the original except for the absence of the drivers signature? Would it be sufficient to make the PTD's available through an electronic interface or would the transferor be required to electronically transmit?

**Answer:** The regulations require that the transferor must provide to the transferee documentation that includes all the PTD information, not just make it accessible to the transferee. As a result, the PTD requirements would not be satisfied if the transferee is merely given access to the PTD information.

4. **Question:** VI -I #2: The answer states that "product codes may never be used to meet the requirements for specific language regarding conventional gasoline." We believe that some pipeline companies have published conventional gasoline specifications with the required statement "This product does not meet the requirements..." with the intent that use of that product's code in the batch designation will meet the product transfer document requirements. Will the EPA accept this?

**Answer:** No, the specific language regarding conventional gasoline at § 80.106(a)(1)(vi) and certain conventional blendstocks at § 80.106(b), can not be included only in product codes. The actual statements must be included in the product transfer documentation.

5. **Question:** VI-I #1: The answer states that the transferor "must provide to the transferee... product transfer documents." On an import the transferor is a foreign entity presumably not

subject to our laws. How do we ensure that the foreign refiner provides all information? As importers are we to generate it ourselves?

**Answer:** Foreign refiners are not subject to the PTD requirements. Importers of gasoline produced at foreign refineries, however, are required to provide PTD information to all parties to whom they transfer title or custody of RFG, RBOB or conventional gasoline.

6. **Question:** VI-I #3 Please confirm that only a minimum oxygen statement (1.5 wt % per gal. min.) is required for RFG transfer documents. We previously thought that both the min statement and the various max. statements (2.7 or 3.5)) would be required for oxygen.

**Answer:** The answer in the original Q & A's was incomplete, in that it did not include the maximum standards for oxygen. As per § 80.77 of the regulations, the PTD's for simple model RFG need to contain the following min/max's.

	<u>Averaged Standards</u>
Benzene	1.3 vol% per gal max.
Oxygen	1.5 wt% per gal min. 2.7 wt% per gal max. (VOC Controlled) 3.5 wt% per gal max. (Non-VOC-Controlled)
RVP	7.4 psi per gallon max., VOC Control Region 1 8.3 psi per gallon max., VOC Control Region 2

PTD's for simple model RFG designated as VOC-controlled must include the minimums and maximums for oxygen, the maximums for benzene and RVP. For simple model RFG not designated as VOC-controlled, the PTD must include the minimum and maximum for oxygen and the maximum for benzene. If a refinery is subject to a ratchet as a result of a survey failure, the min/maxs on the PTDs should reflect the adjusted standard. In the case of RBOB, product transfer documents will not show the minimum or maximum standard for oxygen, but must specify the amount and type of oxygenate which the RBOB requires in order to meet the properties claimed by the refiner or importer of the RBOB.

7. **Question:** One pipeline has notified all shippers and suppliers that their metering ticket will be the official transfer document for all shipments. This appears to be appropriate for a transfer whereby the pipeline is delivering (or transferring custody to a party) but how can it be appropriate when the pipeline is receiving (or being the transferee) product from a shipper? Isn't the shipper required to provide its own document? Or can we rely on the pipeline's ticket which memorializes the transaction?

**Answer:** EPA does not require that there be an "official" transfer document. While the approach described in the question seems appropriate, the enforcement liability still remains with

the transferor. As a result, the transferor should verify that the transferee receives all the PTD information for each batch.

8. **Question:** On a shipment from our refinery to a pipeline we are often providing transfer of title to another oil company while simultaneously transferring custody to the pipeline. Pipeline companies are telling us that as long as the shippers code (as part of the batch designation) identifies that exchange partner receiving title, we do not have to generate a separate transfer document to that exchange partner. Is this O.K?

**Answer:** No. As the transferor, you would be responsible for providing PTD information to any party that directly receives custody or title of a delivery of RFG, RBOB or conventional gasoline from you. In the above scenario you would have to provide PTD information to both the pipeline actually receiving the product and to the other oil company taking title of the gasoline from you.

9. **Question:** If a party with whom we exchange gasoline does not yet have a registration number are we then in violation on a particular transaction as a result of our not being able to include it on transfer documents?

**Answer:** A party is required to include in the product transfer documents the EPA registration number of the transferee of gasoline, if the transferee is a refiner, importer, or RFG oxygenate blender. If the transferee does not provide the transferor with an EPA registration number and the transferor does not otherwise know an EPA registration number for the transferee, yet the transferor knows the transferee is a refiner, importer, or RFG oxygenate blender, the transferor would be in violation of the product transfer requirements if the gasoline is transferred.

During the phase-in period for the RFG program (before December 1, 1994), however, a transferor may transfer RFG to a refiner, importer, or RFG oxygenate blender without having a registration number for the transferee. This exception for the phase-in period would not apply in the case of RBOB transfers to oxygenate blenders, and the requirement at § 80.69(d)(1), to transfer RBOB only to registered oxygenate blenders, applies regardless of when the RBOB is transferred.

10. **Question:** Assuming that an RBOB refiner elects to use "worst case" oxygenate blending assumptions in complying with the RFG regulations, is there any special information that the product transfer documents must include other than the requirements set out in § 80.77 of the regulations?

**Answer:** No, all the product transfer documentation requirements for RBOB are located in § 80.77 of the regulations.

## CALIFORNIA ENFORCEMENT EXEMPTIONS

1. **Question:** What options are available to refiners (and other regulated parties) in California for downgrading federal RFG in 1995, and CARB Phase II RFG in 1996 and beyond, to conventional gasoline for use outside the State of California. Such downgrading may be necessary, for example, at a terminal located in California downstream of the refinery but close to the California border with Arizona or Nevada, and that receives product via a pipeline that also goes into Arizona or Nevada. There undoubtedly will be situations where "California" gasoline is shipped via the pipeline to this terminal, but the terminal tanks are too full to receive all of this "California" gasoline. In such a case it will be necessary to allow the "California" gasoline to continue moving down the pipeline to a terminal outside California. In most cases, this gasoline would have been in fungible storage prior to shipment on the pipeline and the sample obtained at the refinery will not represent the gasoline diverted out of California.

**Answer:** Normally, RFG may be redesignated as conventional gasoline without any restrictions, so long as the product transfer documents reflect this redesignation, and the redesignated gasoline is in fact used as conventional gasoline. See the Answers to Questions IX-B-13 and 14 of the July 1, 1994 Question and Answer Document. This answer is not true in the case of California gasoline, however, because the testing methods used in California are not required to be the test methods specified in § 80.46. Under § 80.81(h) refiners and importers of California gasoline may use the test methods allowed by California State regulations, in lieu of the § 80.46 test methods. This testing difference is allowed both before and after the CARB Phase II standards become effective in March, 1996. As a result, gasoline produced for use in the State of California does not necessarily meet the testing requirements for federal RFG or anti-dumping compliance.

The options available for redesignating California gasoline as federal conventional gasoline are the following.

First, if the refiner or importer tested the gasoline in question using the test methods specified under § 80.46, the gasoline may be used in or out of the State of California using the same approaches available in the remainder of the country. This would be true in the case of gasoline produced to the federal anti-dumping standards for use outside the Los Angeles or San Diego RFG covered areas before March 1996 (no redesignation would be necessary), or in the case of gasoline produced to the federal RFG standards before March 1996 or to the California Phase II standards beginning in March 1996 (redesignation would be necessary). Note that if the gasoline in question is part of a fungible mixture, in order to use this option all gasoline in the mixture must have been tested using the methods specified under § 80.46.

Second, the gasoline may be used as federal conventional gasoline without having been tested using the methods specified under § 80.46 provided that:

- a) The gasoline in question was produced in accordance with the standards and requirements for the State of California, including any testing requirements, and

the gasoline in question meets all standards for either RFG (under § 80.41) or for anti-dumping (under § 80.101).

- b) The gasoline in question was intended for use in the State of California when produced or imported.
- c) The gasoline in question was transported via pipeline, and when shipped was reasonably expected to be delivered to a terminal in the State of California.
- d) Due to unforeseen operational necessity the gasoline could not be delivered to any terminal located in the State of California, and the only feasible option was to deliver the gasoline to a terminal located outside the State of California.
- e) The parties involved (including the pipeline and the owner of the gasoline in question) retain documents that describe the intended destination of the gasoline and the nature of the operational necessity that resulted in the gasoline being delivered to a terminal outside the State of California.

### ANTI-DUMPING REQUIREMENTS

1. **Question:** Section 80.102(b)(1) pertains to blendstocks and defines  $V_{bs}$  as "volume of applicable blendstock produced or imported and transferred to others" during the calendar year. Does this apply to an importer which imports a blendstock and immediately sells or trades it to another company without any processing? If the importer processes it in its refinery, is it still included in  $V_{bs}$  for the importer?

**Answer:** Any imported gasoline blendstocks which are sold to another company would be treated as "imported and transferred to others" for the purposes of the  $V_{bs}$  term of § 80.102(b)(1). A company that both imports gasoline and produces gasoline at one or more domestic refineries (including blender-refinery operations) must determine compliance separately for the imported gasoline and for the gasoline produced at each refinery operation. As a result, transfers of blendstock within a single company from one refinery to another refinery, or from the company's importer operation to a refinery operation would also be included in the  $V_{bs}$  term of § 80.102(b)(1).

2. **Question:** May conventional gasoline be used as a blendstock in the production of RFG?

**Answer:** Conventional gasoline may not be used as a blendstock for the production of RFG, because the conventional gasoline would already have been included in the compliance calculations of a refiner or importer. If a refiner were allowed to use conventional gasoline as an RFG blendstock, it is possible a refiner could produce a large volume of "clean" conventional gasoline to improve the company's anti-dumping compliance posture, and then merely turn this

conventional gasoline into RFG through minimal additional blending. Such an approach would be inconsistent with the intent of the anti-dumping program. Moreover, after the conventional gasoline dye/marker requirements are promulgated, the use of conventional gasoline as an RFG blendstock would not be possible for this additional reason.

3. **Question:** Do common carriers have any requirements or potential liability pertaining to the anti-dumping provision for conventional gasoline?

**Answer:** Common carriers (like all other regulated parties) are prohibited from distributing conventional gasoline for use in an RFG covered area, and must comply with the product transfer document requirements of § 80.106.

4. **Question:** Does the provision at § 80.101(f)(3), related to the baseline for imported gasoline for a party that is both a refiner and an importer, apply to both imported conventional gasoline and imported RFG, or only to imported conventional gasoline?

**Answer:** Section 80.101(f)(3) applies only to conventional gasoline, and does not affect the baseline that applies to imported RFG. Section 80.101(f)(3) states that the operation of this section is to create a new "compliance baseline" for imported gasoline. The compliance baseline applies to conventional gasoline only, and not to RFG.

5. **Question:** In the case of a party who is both a refiner and an importer and who, therefore, is subject to § 80.101(f)(3), what is the impact of refinery groupings under § 80.101(h) on the calculation under § 80.101(f)(3)?

**Answer:** Section 80.101(f)(3) states that a party who is both a refiner and an importer must calculate a compliance baseline for imported gasoline using the 1990 volume weighted average of all the refiner's individual refinery baselines. Section 80.101(h) allows a refiner who operates more than one refinery to group the refineries for purposes of demonstrating compliance with the anti-dumping standards. These two provisions operate independently, so that a refiner who is subject to § 80.101(f)(3) would use all of its refineries to calculate the imported gasoline compliance baseline, regardless of any refinery groupings under § 80.101(h).

6. **Question:** How does § 80.101(f)(3) operate in the case of a refinery for which there are more than one persons who meet the definition of refiner? Which of the co-refiners must calculate a compliance baseline for imported gasoline?

**Answer:** In the case of a refinery for which there is more than one refiner, only the refiner who submits reports to EPA (normally the refiner who principally operates the refinery) would be affected by § 80.101(f)(3). Thus, if this reporting co-refiner is also an importer, this co-refiner

would include the refinery in the calculations under § 80.101(f)(3), and no other co-refiner would be impacted by § 80.101(f)(3). If the reporting co-refiner is not also an importer, § 80.101(f)(3) would have no application, even if other co-refiners are also importers.

7. **Question:** How does § 80.101(f)(4) operate to adjust a compliance baseline determined under § 80.101(f)(3)?

**Answer:** Section 80.101(f)(4) states that this provision must be used each averaging period to "adjust" a compliance baseline determined under § 80.101(f)(3). For the calculated importer baseline under § 80.101(f)(3) this adjustment is based on the domestic refiner-importer's volume of imported gasoline in 1990 (the term  $V_{1990}$  from the equation at § 80.101(f)(4)(ii)), and that party's volume of reformulated gasoline, conventional gasoline, RBOB, and California gasoline imported during the relevant averaging period (the term  $V_a$  from the equation at § 80.101(f)(4)(ii)).

In consequence, if the volume of imported gasoline of all types during an averaging period is less than that party's 1990 import volume of gasoline, the importer baseline will be the compliance baseline calculated under § 80.101(f)(3). If, on the other hand, a domestic refiner-importer imported no gasoline in 1990, the adjusted importer baseline for imported conventional gasoline for this party for each averaging period would be the statutory baseline. Lastly, if the domestic refiner-importer imported some gasoline in 1990, but less than the volume of gasoline imported during an averaging period, the importer baseline for this party will be calculated to be a combination of the statutory baseline and the individual baseline as calculated under § 80.101(f)(3).

8. **Question:** Please clarify when a batch report is required for shipped blendstocks. Specifically, are batch reports required anytime an applicable blendstock is shipped or just for applicable blendstocks that are to be included in compliance calculations? If a refiner fails a blendstock ratio test in a given year are all shipped gasoline blendstocks batch reported and included in compliance calculations in the two subsequent years, or just applicable blendstocks?

**Answer:** Under § 80.105, batch reports (batch number, date, volume, and properties) are required only for blendstock batches that are included in a refiner's compliance calculations. A refiner who is required to account for blendstocks under § 80.102, and who must include all blendstocks (not just applicable blendstocks) in the refiner's compliance calculations, therefore must submit batch reports for all blendstocks that are produced and transferred to others unless excluded under § 80.102(d)(3). A refiner who is not required to account for blendstocks under § 80.102 must report the total volume (but not batch specific information) for applicable blendstocks that are produced and transferred that are excluded under § 80.102(d)(3), and the total volume of those that are not excluded under § 80.102(d)(3).

9. **Question:** Since gasoline produced or imported for use in California on or after March 1, 1996 is not subject to the anti-dumping requirements, will all such gasoline be subject to the RFG requirements even if this gasoline is to be used outside of the RFG area?

**Answer:** The California exemption specified at § 80.81 is from certain requirements intended to demonstrate compliance with the RFG and anti-dumping requirements, such as independent sampling and testing, and subsequent to March 1, 1996 when the California Phase II standards become effective, certain record keeping and reporting requirements. Section 80.81 is not an exemption from meeting the RFG standards for gasoline used in RFG covered areas or the anti-dumping standards that apply to conventional gasoline. EPA has granted the exemption at § 80.81 because there is a presumption that gasoline produced to meet the California Phase II standards will also meet the federal RFG standards. If any gasoline produced in California does not meet the RFG standards (in the case of gasoline used in the Los Angeles or San Diego RFG covered areas), or the anti-dumping standards (in the case of gasoline used outside these RFG covered areas), the refiner or importer will have violated the RFG/anti-dumping regulations, for which penalties may be assessed.

As a result, gasoline used outside the RFG covered areas in California will be evaluated for compliance with the anti-dumping standards, and not with the RFG standards. As a practical matter, it is likely that gasoline produced to meet the California Phase II standards also would meet the federal anti-dumping standards. Nevertheless, California refiners should evaluate the refinery-specific anti-dumping standards (at § 80.101) that apply to their refineries to ensure these standards are met.

10. **Question:** How is excess volume above 1990 baseline volume counted against 1990 refinery baseline parameters? (a) If volume in 1995 is 10% above that of the 1990 volume and 1995 production is 90% RFG and 10% conventional, is the 10% conventional compared against the refinery 1990 baseline, statutory baseline or some combination of both? (b) Same as (a) but using 110% conventional gasoline production? (c) Same as (a) but using 50% conventional and 50% RFG?

**Answer:** For a refiner or importer whose 1995 total gasoline volume exceeds that of 1990, the revised compliance baseline adjustment equation specified under § 80.101(f)(4)(ii) is used to determine the applicable baseline. This equation adjusts baselines solely on the basis of the overall gasoline volume in an averaging period as compared to baseline 1990 volume, and is independent of the mix between reformulated and conventional gasoline. As a result, in the question presented, where the refinery's 1995 gasoline volume increases 10% over the refinery's 1990 baseline volume, the same adjusted compliance baseline would be used for all conventional gasoline produced in 1995, regardless of the mix of RFG and conventional gasoline in 1995.

11. **Question:** Does a refiner include or exclude a particular refinery which it is selling, or has recently sold, in its volume weighted average baseline calculation for its imported conventional gasoline?

**Answer:** If a refinery is sold during 1994, then the refiner who owns the refinery on January 1, 1995 is responsible for the compliance of that refinery's conventional gasoline and 1) may include it in an aggregate group with other refineries and 2) must include that refinery in the volume weighted average baseline determination for its imported conventional gasoline. If the refinery is sold after January 1, 1995, then the selling and purchasing refiners must determine compliance for the gasoline produced during each party's ownership, and each party must determine its respective baseline volume based on the period of ownership for each refiner. However, both parties would use the 1990 annual average baseline properties as determined under §§ 80.90 and 91 for evaluating compliance. In addition, if either refiner also imports conventional gasoline, the refiner-importer must include that refinery in its import baseline determination, using the time-apportioned baseline volume and baseline properties to calculate the refinery-average baseline. The purchasing refiner may also aggregate its portion of the ownership with other refineries each owns under § 80.101(h), and under § 80.101(h)(2)(ii) the selling refiner must so aggregate if the refinery previously was part of an aggregation. The refiner must use the time-apportioned baseline volume and the baseline properties to weight this refinery in the aggregate baseline, and the volume and properties of conventional gasoline produced at the refinery during the portion of the averaging period when the refinery is owned to weight this refinery in the aggregate compliance calculation.

For example, if Refiner A sells the refinery to Refiner B on March 31, then Refiner A would use 1/4 of the 1990 volume as its share of the 1990 baseline volume, and Refiner B would use 3/4 of the 1990 volume as its share of the 1990 baseline volume.

12. **Question:** The regulations state that gasolines with RVP equal to or less than the RVP required under 40 CFR 80.27 (Summer Gasoline) shall use the applicable Summer Complex Model under 80.45 and the Winter Model for RVP's greater than that required under 40 CFR 80.27. In most areas of the country 9.0 psi was the summer specification under 40 CFR 80.27. Would this mean that any conventional gasoline produced to an RVP less than or equal to 9.0 psi would use the Summer Complex Model and greater than 9.0 psi would use the Winter Complex Model no matter what time of the year that gasoline is produced? Does the fact that under § 80.27 gasoline in the Southern Areas that goes to an ozone non-attainment area must be 7.8 psi alter this split in any way? Is 9.0 psi gasoline produced in California for distribution to Arizona certified with the Summer or Winter Complex Model?

**Answer:** Section 80.101(g)(5) and (6) state that the emissions performance of gasoline with an RVP that is equal to or less than that required under § 80.27 must be determined using the appropriate summer complex model and that the emissions performance of gasoline with a higher RVP must be determined using the winter complex model. The intent of the regulations was to clearly distinguish summer and winter gasoline for the purposes of determining

compliance. Although the regulations establish a criterion based on actual RVP levels, it also is intended that gasoline which is produced for use outside the high ozone period (May 1 through September 15 for most of the country, and April 1 through October 30 in California), or is not intended to blend down storage tanks in preparation for the high ozone period, should be evaluated using the winter complex model. For example, gasoline produced beginning at the end of the ozone control period for distribution over the winter months should be evaluated using the winter complex model regardless of the actual RVP of this gasoline. In the situations described in the question, 7.8 psi gasoline should be considered summer gasoline unless it is produced for use clearly outside the high ozone period, and 9.0 psi gasoline produced in California for winter use in Arizona should be considered winter gasoline.

13. **Question:** A refinery has two product tanks in series; a 10,000 gallon tank in which blendstocks are combined to produce gasoline (a blend tank), followed by a 50,000 gallon tank which feeds directly to the rack. Customers pull product from the rack. There are no blend streams going into the 50,000 gallon tank. Can we just certify the 10,000 gallon tank for all the properties for a specific volume (batch), without actually sampling any product from the larger tank?

**Answer:** The refiner should certify the properties of each batch produced in the 10,000 gallon blend tank based on a sample of gasoline collected after all the blending components have been added and mixed. The volume of each batch would be the volume of gasoline that is transferred from the blend tank up to the point when additional blendstocks are added to the blend tank to begin the subsequent batch. No certification sampling and testing would be required of gasoline from the 50,000 gallon tank.

14. **Question:** A refinery has streams (alkylate, butane, platformate, etc.) being blended into two tanks, 95 and 85 octane. Products from these two tanks are in-line blended at the rack to give 87, 89, and 92 octane product. Can just the 85 and 95 octane tanks be certified for all gasoline properties for a specific volume (batch), without actually sampling any product downstream of the in-line blending?

**Answer:** Conventional gasoline that has been included in a refiner's compliance calculations may be fungibly mixed, including multi-grade mixing, without the need for additional sampling and testing.

15. **Question:** Can a refiner that is not required to account for blendstocks under § 80.102 account for raffinate at the refinery? Also, may raffinate that was produced during 1990 but that was not used to produce gasoline be included in the baseline for the refinery?

**Answer:** If a refiner uses a particular blendstock, including raffinate, to produce gasoline at a refinery, then the volume and properties of that blendstock must be included in the refiner's

compliance calculations as part of that batch of gasoline. If the refiner is not required to account for blendstocks under § 80.102, only blendstocks that are used to produce gasoline at the refinery may be included in the refinery compliance calculations, and blendstocks that are not used to produce gasoline at the refinery may not be included in the refinery compliance calculations. If the refiner is required to account for blendstocks under § 80.102, all blendstock produced at the refinery must be included in the refinery compliance calculations, unless exempt under § 80.101(d)(2), regardless of whether the blendstock is used to produce gasoline at the refinery.

## TEST TOLERANCES

1. **Question:** Will the EPA allow certain pipeline companies to maintain their recently elected 1.18 percent maximum benzene specification, which could tighten supply into major RFG consuming areas?

**Answer:** EPA has no authority to allow or disallow gasoline specifications that are set by a pipeline or any other party, as long as they are in compliance with the applicable regulations.

2. **Question:** In theory, each step of the RFG testing chain could yield varying (assuming increased) results due to reproducibility -- what is EPA's position on this?

**Answer:** It is up to the regulated parties to determine margins of safety. EPA does not get involved in this determination.

## TRANSITION ISSUES

1. **Question:** During the transition into reformulated gasoline, is it permissible prior to December 1, 1994, for a refiner to blend components (either its own manufacture or purchased) with another refinery's finished gasoline and designate that resulting product as reformulated gasoline if all necessary properties are met and if the third-party finished gasoline used in the blend was not designated by the manufacturer as reformulated gasoline?

**Answer:** Yes, as long as the resulting product is properly sampled and tested and meets the standards for RFG, and all other regulatory requirements for a refiner of RFG are met.

2. **Question:** Can a finished (say 97 r+m/2) gasoline not conforming to anti-dumping or RFG specs be held in tankage in October or November 1994, and then be blended to RFG?

**Answer:** Yes. As stated in Question 1 above, the blended product must be properly sampled and tested and meet the standards for RFG, and all other refiner requirements under the regulations must be met.

3. **Question:** When replacing conventional gasoline with RFG at a terminal, is it considered blending if the RFG is mixed with conventional bottoms?

**Answer:** During the transition period prior to December 1, 1994, certified RFG may be put into tanks that contain conventional gasoline bottoms, as long as the tank is essentially filled with certified RFG gasoline on December 1, 1994, and the gasoline is properly sampled and tested and is in compliance with the RFG downstream standards. After December 1, 1994, the mixing of RFG and conventional gasoline is prohibited.

4. **Question:** It is our understanding that prior to December 1, 1994, a refinery could make RFG quality gasoline, designate it as conventional gasoline and ship it to terminals that, as of December 1st, will be wholly dedicated to RFG markets. Of course, at some point prior to December 1st, these terminals will need to sample and test their gasoline to ensure that it is RFG quality before they can redesignate it as RFG. Would the EPA have any concerns with this approach?

**Answer:** This can be done to some extent, however, as indicated in Question 3 above, the terminal will need to receive RFG that has been certified as RFG by the refiner or importer in advance of December 1, 1994, so that its tanks essentially will be filled with certified RFG by December 1.

5. **Question:** Section 80.78(a) requires segregation of several categories of gasoline and precludes the mixing of any amount of the gasolines that must be segregated.

In the answer to Question IX-A-4 of the July 1, 1994 Question and Answer Document EPA recognized the difficulty in changing the service of a storage tank as a result of tank heels, and outlined a 5-step procedure for changing the service of a gasoline storage tank. EPA's description of this procedure does not state that a company will avoid violating the § 80.78(a) segregation prohibition if this procedure is followed, and, therefore, the procedure appears to expose companies to liability for violation of the segregation requirements.

In addition, in answer to Question IX-B-16 of the Question and Answer Document EPA outlined procedures for dealing with interface mixtures. It is unclear if a party who follows these procedures will be in violation of the § 80.78 segregation prohibitions. If this interface activity is considered a violation, the regulated parties will be exposed during all sequential shipping of gasoline on a pipeline, an activity acknowledged by EPA to be necessary for conducting business and supplying gasoline to the marketplace. Without some type of relief, regulated parties will not be able to ensure delivery of available supplies of RFG.

Will EPA exercise enforcement discretion and not initiate an enforcement action if parties follow the procedures described in the Question and Answer Document, or will EPA enter into written

enforcement protocols with regulated parties to ensure no enforcement actions are brought in order to "facilitate the orderly conduct of business."

**Answer:** A party who follows the procedures for dealing with the change of service for a gasoline storage tank, or for dealing with pipeline interface mixtures, that are described in the Question and Answer Document will be considered by EPA to be acting in a manner that is consistent with the segregation requirements expressed in the regulations.

## **DOWNSTREAM BLENDING ISSUES**

1. **Question:** If a downstream blender alters an RBOB by addition of other hydrocarbons, how is the baseline selected and how is the fuel regulated and reported?

**Answer:** Section 80.78(a)(7) prohibits any person from combining RBOB with any other gasoline, blendstock, or oxygenate except for 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, or other RBOB for which the same oxygenate type and amount (or within the range of amounts) was specified by the refiner or importer. Altering RBOB in any other way would be a violation.

2. **Question:** Can material that does not conform with commercial specifications for gasoline still be considered gasoline for compliance with the RFG regulations? For example, could a mixture of butane and MTBE be blended with non-VOC controlled simple model RFG? The butane-MTBE mixture would meet the winter RFG benzene, oxygen, and toxics requirements, but would not conform with ASTM vapor pressure, distillation, and volatility specifications.

**Answer:** Blending components that are added to RFG must meet the standards for RFG and the party who conducts such blending must meet all requirements that apply to refiners. The regulations, however, do not require them to also conform with commercial specifications for gasoline.

**\*\*Note: The following is an update for an answer to Question 16 in the Downstream Blending Section (Section IX-B) of the July 1, 1994 Question and Answer Document.**

**IX-B-16. Question:** What options are available to pipelines for dealing with interface material, i.e., mixtures of two different types of product that result when the different products are adjacent during pipeline movement?

**Answer:**

Interface Mixtures

First, the pipeline must minimize the instances of prohibited mixing, through the sequencing together of product types that may be legally mixed, to the greatest extent possible.

Second, in those instances where illegal interface mixing occurs, the entire interface must be added to the product that will most ensure no adverse environmental consequences of the mixing. For example:

- a. Interface mixtures of RFG or RBOB and conventional gasoline must be classified as conventional gasoline.
- b. Interface mixtures of VOC-controlled RFG and non-VOC-controlled RFG must be classified as non-VOC-controlled RFG.<sup>4</sup>
- c. Interface mixtures of VOC-controlled RFG for Region 1 and VOC-controlled RFG for Region 2 must be classified as VOC-controlled RFG for Region 2 or as non-VOC-controlled RFG.
- d. Interface mixtures of OPRG-designated RFG and non-OPRG-designated RFG must be classified as non-OPRG-designated RFG.
- e. Interface mixtures of VOC-controlled, OPRG RFG and non-VOC-controlled, non-OPRG RFG must be classified as non-VOC-controlled, non-OPRG RFG.
- f. Interface mixtures of RBOB and RFG must be classified as RBOB.
- g. Interface mixtures of any-oxygenate RBOB and ether-only RBOB must be classified as ether-only RBOB.

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<sup>4</sup> The mixing of VOC-controlled RFG with non-VOC-controlled RFG is not prohibited during the transition period prior to May 1 each year (prior to June 1 each year for retail outlets), and subsequent to September 15 each year. During the VOC transition period, however, mixtures of VOC-controlled RFG and non-VOC-controlled RFG nevertheless must be classified as non-VOC-controlled unless the resulting mixture meets the applicable VOC downstream standard (as discussed in the Transition section of this document), and during the VOC-control period such mixtures also must be classified as non-VOC-controlled RFG.

- h. Interface mixtures of generic RBOB (i.e., any-oxygenate or ether-only RBOB) and refiner-specific RBOB (under § 80.69(a)(1)) must be classified as refiner-specific RBOB.

Third, the pipeline must retain documents that reflect the nature of any illegal interface mixing and that the interface was classified in the proper manner, and must make these documents available to EPA upon request.

### Transmix

EPA understands there are certain types of interface mixtures that cannot be easily added to either of the adjoining products that produced the interface. This primarily is the case of interface mixtures of gasoline and distillate, commonly called "transmix." EPA further understands that the current pipeline industry practice is to transport transmix via pipeline or barge to a facility designed to separate the gasoline and distillate portions, called a "transmix processor," which is a refiner under the RFG and anti-dumping programs.

### Transmix Processors

First, the gasoline produced must be classified as conventional gasoline, and not RFG. If the gasoline produced is classified as RFG, the transmix processor must meet all refiner standards and requirements applicable to any other refiner of RFG.

Second, no additional blendstocks may be used. If blendstocks are used, in addition to the transmix, the transmix processor must meet the anti-dumping refinery standards and requirements for this blendstock in the same manner as any other blender-refiner. A transmix processor could, of course, blend gasoline produced through the process with other finished gasoline without invoking the anti-dumping requirements, e.g., premium grade gasoline could be blended to improve octane.

Third, the transmix used must be a mixture of distillate and gasoline - either RFG or conventional gasoline. If the transmix is a mixture of distillate and blendstock, the blendstock will never have been accounted-for, and the transmix processor must meet the anti-dumping refiner standards and requirements for any gasoline produced using this transmix.

This distinction between the treatment of a transmix processor who produces RFG versus conventional gasoline is appropriate because the gasoline produced by a transmix processor is not identical to the gasoline that went into the transmix. These changes in gasoline quality through transmix processing are simply less critical for conventional gasoline than for RFG. In addition, the gasoline portion of transmix often will be mixtures of conventional gasoline and RFG, which would be appropriate for the conventional classification, but inappropriate for the RFG classification.

## Transmix Blending

EPA understands that in certain limited situations where transmix cannot be transported via pipeline to a transmix processor, current pipeline industry practice is to add the transmix to gasoline in very small quantities - 0.25 percent or less of the gasoline volume - and to test the resulting gasoline to ensure it remains on-spec.<sup>5</sup> This practice may constitute illegal blending under the RFG and anti-dumping programs, unless the blender meets all applicable refiner standards and requirements.

In the case of transmix added to conventional gasoline:

First, the transmix must result from pipeline operational necessity.

Second, the transmix must be present in a terminal from which there is no out-bound pipeline or water transportation by which the transmix could be transported to a transmix processor.

In the case of transmix added to RFG:

First, the transmix must result from pipeline operational necessity.

Second, the transmix must be present in a terminal from which there is no out-bound pipeline or water transportation by which the transmix could be transported to a transmix processor.

Third, conventional gasoline must not be among the slate of products that arrive at the terminal (transmix must be blended with conventional gasoline if possible).

Fourth, the blending rate of transmix to RFG must be no greater than 0.25 percent by volume.

Fifth, the transmix must be blended with RFG in a batch mode, so that a sample may be collected of the entire batch.

Sixth, the transmix-RFG blend must be sampled and tested, and the resulting blend must meet all applicable RFG downstream standards, before any of the blended gasoline leaves the terminal.

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<sup>5</sup> The transmix is added to gasoline instead of to distillate, because the consequences of any motor vehicle driveability problems resulting from distillate being mixed with gasoline are less serious than the consequences of explosions that could result from gasoline being mixed with distillate.

Seventh, the pipeline must retain documents that reflect the rate of transmix blending and the results of all testing on the transmix-RFG blend, and must make these documents available to EPA upon request.

As an alternative to blending the transmix in a batch mode with sampling and testing before any of the RFG blended with transmix leaves the terminal, the transmix may be blended with RFG in line provided that the pipeline carries out the following program to ensure the transmix will not cause any adverse environmental consequences.

First, the pipeline must conduct a program of laboratory testing, in which samples of transmix are mixed with RFG to determine the effects of the transmix on the RFG. In this program, the transmix samples must to the greatest extent possible represent the full range of the transmix types that are typically blended by the pipeline, and the RFG must to the greatest extent possible represent the full range of the types of RFG into which transmix will be blended by the pipeline. These different transmixes and gasolines must be blended at the maximum rate of transmix blending the pipeline intends to use, but a maximum of 0.25% transmix by volume.

Second, the RFG must be tested for each RFG parameter (RVP, oxygen, benzene, sulfur, olefins, aromatics, E200, and E300), and the RFG transmix blend must be tested for each of these parameters, using the testing methods specified at § 80.46.

Third, the results of all of the laboratory tests must show that the maximum change in properties of the RFG for any RFG-transmix blend is not more than the ranges specified at § 80.65(e)(2)(i).

Fourth, the pipeline must submit a report to EPA which describes and gives the results for the testing program carried out in conformance with the above steps, prior to proceeding with step 5.

Fifth, the pipeline must conduct RFG-transmix blending as described in steps 5 and 6 of the first RFG-transmix procedure, above, for a period of 30 days, and the results of the blending must show that the maximum change in properties of the RFG for any RFG-transmix blend is not more than the ranges specified at § 80.65(e)(2)(i). The pipeline must submit a report to EPA which describes and gives the results for the testing program carried out in conformance with step 5, prior to proceeding with step 6.

Sixth, the pipeline must conduct monthly tests of the RFG-transmix blended, and the results of the blending must show that the maximum change in properties of the RFG for any RFG-transmix blend is not more than the ranges specified at § 80.65(e)(2)(i).

Seventh, the pipeline must retain copies of the test results called for in step 6, and copies of the testing data that formed the basis for the reports to EPA under steps 4 and 5 above, for a period of five years and submit these records to EPA on request.

## IMPORTER ISSUES

1. **Question:** What options for meeting the importer requirements are available to an importer who imports gasoline into the United States by truck? How does such an importer meet the every-batch sampling and testing requirements, since every truck (or truck compartment) would be considered a separate batch?

**Answer:** A party who imports RFG into the United States must meet all importer requirements for each batch of imported RFG, including those involving sampling and testing, independent sampling and testing, record keeping, reporting, and attest, regardless of the mode of transportation for the RFG when imported.

An importer who imports conventional gasoline (but not RFG) into the United States by truck (e.g., by truck across the U.S./Canada border) may meet the importer sampling and testing requirements by:

1. Importing conventional gasoline that meets the anti-dumping standards, specified at § 80.101(b), on an every-gallon basis.
  - a. The standards may be met separately for "summer" gasoline and for "winter" gasoline, based on the baseline applicable to the importer for these two periods. Any gasoline with an RVP that is equal to or less than 9.0 psi and is intended for use during the period May 1 through September 15 must be considered "summer" gasoline, and all other gasoline must be considered "winter" gasoline. In the alternative, the standards may be met for all gasoline throughout the year on the basis of the annual baseline applicable to the importer.
  - b. In the case of an importer who is subject to the statutory baseline, the "summer," "winter," and annual baseline values are specified at § 80.91(c)(5).
2. Demonstrating that every gallon of imported gasoline meets the anti-dumping standards, through test results from the truck-loading terminal that is the source of gasoline for import into the United States.
  - a. The gasoline at the truck-loading terminal must be tested for each applicable parameter specified under § 80.65(e)(2)(i), using the test methods specified under § 80.46.
  - b. The importer must obtain a copy of the terminal's test results for each truck load of gasoline that is imported into the United States.

3. Treating each truck load of imported gasoline as a separate "batch" for purposes of assignment of batch numbers under § 80.101(i), record keeping under § 80.104, and reporting under § 80.105, although the batches over a one month period may be combined into a single "batch" under the terms of § 80.101(i)(2).
4. Conducting a program of periodic quality assurance sampling and testing over the gasoline obtained from each truck-loading terminal, to ensure the accuracy of the truck-loading terminal's test results.
  - a. The quality assurance samples must be obtained from the truck-loading terminal by the importer, and the date of sample collection must not be known in advance by the terminal.
  - b. The importer must test each sample (or use an independent lab to test the sample) for the parameters specified under § 80.65(e)(2)(i) using the test methods specified under § 80.46, and the results must correlate with the terminal's test results within the ranges specified under § 80.65(e)(2)(i).
  - c. The frequency of quality assurance sampling and testing must be at least one sample for each fifty trucks loaded by the importer at a terminal, or one sample per month, whichever is more frequent.
5. The importer must include the testing and quality assurance testing specified in this answer in the annual attest engagement, and attest engagement report, required under § 80.105(c) and §§ 80.125 through 80.130.
6. EPA inspectors or auditors 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 be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

2. **Question:** What options are available to an importer who wishes to import product that meets the definition of gasoline, but who wishes to further process this gasoline to meet the standards for conventional gasoline or RFG after the gasoline arrives at the U.S. port of entry?

**Answer:** Under the RFG final rule an importer must include all imported product that meets the definition of gasoline in the importer's compliance calculations for either RFG or conventional gasoline. If this imported gasoline is then processed by blending with additional blendstock, the subsequent blending constitutes a refinery operation for which all refiner requirements must be met, including refinery standards, refiner sampling and testing, independent sampling and testing in the case of RFG, record keeping, reporting, and attest engagements. Further, the RFG or anti-dumping standards for such an operation must be met solely on the basis of the blendstocks used,

and the previously imported (and previously accounted-for) gasoline may not be included. This is true regardless of whether the subsequent blending-refining is conducted by the original importer of the gasoline, or by another party.

A company that is an importer may exclude gasoline imported by that company from the company's importer compliance calculations, provided that the company uses the gasoline as a blendstock in a refinery operated by the company, and includes the gasoline-treated-as-blendstock (GTAB) in the company's refinery compliance calculations. This accounting of GTAB must occur as follows:

- 1) The GTAB must be included in the compliance calculations for gasoline produced at a refinery operated by the same company that is the importer, for which the company meets all refiner standards and requirements.
- 2) The importer-company may not transfer title to the GTAB to another party until the GTAB has been used to produce gasoline and all refinery standards and requirements have been met for the gasoline produced.
- 3) The refinery at which the GTAB is used to produce gasoline must be physically located at the same terminal at which the GTAB first arrives in the U.S. (the import facility), or at a facility to which the GTAB is directly transported from the import facility.
- 4) The GTAB must be completely segregated from any other gasoline, whether conventional or RFG, and including any gasoline tank bottoms, prior to the point of blending, and sampling and testing, in the company's refinery operation. The GTAB may, however, be placed into a storage tank that contains other GTAB imported by that importer.
- 5) The company must account for the properties and volume of gasoline produced using GTAB in a manner that excludes the volume and properties of any gasoline that previously has been included in any refiner's or importer's compliance calculations. Thus, if GTAB and blendstock are combined in a storage tank that also contains a tank bottom of gasoline, the gasoline tank bottom may not be included in the company's refinery compliance calculations for that batch of gasoline. This exclusion of previously-accounted-for gasoline should be accomplished using the following approach.
  - a) Determine the volume and properties of any tank bottom that is gasoline before any gasoline production begins.
  - b) Add the GTAB plus any blendstock to the storage tank, and completely mix the tank.

- c) Determine the volume and properties of the gasoline contained in the storage tank after blending is complete. Mathematically subtract the volume and properties of the tank bottom to determine the volume and properties of the GTAB plus blendstock added, which is reported to EPA as a batch of gasoline produced.
  - d) All sampling and testing, including the sampling and testing of tank bottoms, must be carried out using the independent sampling and testing provisions at § 80.65(f) if the gasoline being produced is RFG.
  - e) In the alternative, a company that has a "blending" tank that is used only to combine GTAB and blending components (and no gasoline is added to the tank), may account for the gasoline produced in such a blending tank by sampling and testing for the properties of the batch after GTAB and blendstock are added and mixed, and reporting the volume of gasoline shipped from that tank, at the analyzed properties, up to the point a new blend is produced by adding new GTAB and blendstock.
- 6) The GTAB must be materially changed through the company's refinery operation, and imported gasoline may not be treated under this approach merely to achieve a more favorable baseline.
  - 7) The company must meet all importer sampling and testing requirements that apply to imported gasoline for the GTAB.
  - 8) The company must include the volume and properties of each batch of GTAB in the quarterly importer reports to EPA, but with a notation that the batch is not included in the importer compliance calculations because the product is GTAB. Any GTAB that ultimately is not used in the company's refinery operation (e.g., a tank bottom of GTAB at the conclusion of the refinery operation), must be treated as newly imported gasoline, for which all required sampling and testing, and record keeping must be accomplished, and included in the company's importer compliance calculations for the averaging period when this sampling and testing occurs.
  - 9) The company must retain records that reflect the importation, sampling and testing, and physical movement of any GTAB, and must make these records available to the CPA or CIA attester, or to EPA, on request.
  - 10) The company must require the CPA or CIA who conducts the company's annual attest engagement, pursuant to § 80.65(h) and §§ 80.125 through 130, to specifically review the accounting for each batch of GTAB, to attest that all GTAB was included in the company's refinery compliance calculations in

accordance with the procedures specified in this Answer, and to include the details of this review in the attest report.

**\*\*Note: The following is an update for an answer to Question 8 in the Importer Section (Section IX-C) of the July 1, 1994 Question and Answer Document.**

**IX-C-8 Question:** At what point in the import process must shipments of imported gasoline be sampled in order to meet the RFG and anti-dumping requirements?

**Answer:** Section 80.65(e)(1) requires importers to determine the properties applicable to the RFG standards for each batch of imported gasoline designated as RFG prior to the gasoline leaving the import facility, by analyzing a representative sample from the batch using the test methods specified in § 80.46. Section 80.101(i)(1) similarly requires an importer to determine the properties applicable to the anti-dumping standards for each batch of imported conventional gasoline by analyzing a sample using the § 80.46 test methods. In the case of conventional gasoline, under § 80.101(i)(2) the samples from more than one batch of conventional gasoline may be combined into a composite sample and analyzed together, following procedures specified in that section.

These sections thus require that a sample of each batch of imported gasoline must be collected before the batch is combined with any other gasoline or blendstock that is not a part of that imported batch. As a result, in order to meet the requirements, any batch of imported gasoline must be sampled before the batch is off-loaded from a ship into a shore tank if that shore tank contains any amount of any product. This is because a sample from such a shore tank would be a mixture of imported gasoline and the other product, and would therefore not be representative of the gasoline that being imported. For these reasons, a sample of each batch of imported gasoline must be collected before the ship is off-loaded at the port of entry. In the case of imported RFG, the independent lab and the importer (if the importer is using the 10% independent analysis option) must collect a sample of the imported gasoline, and it must be determined that the measurements are consistent with certifiable RFG, before the ship is off-loaded.

The different ship compartments normally must be considered different batches of gasoline, because the gasoline may not be homogeneous across multiple compartments. In the case of imported conventional gasoline, composite samples from multiple batches are allowed, so a volume-weighted composite from the gasoline in different compartments of a ship may be analyzed for anti-dumping compliance purposes. The volume of a batch of imported conventional gasoline must be the off-loaded volume, however, and normally would be established by the importer based on shore tank measurements.

In the case of RFG, the importer and independent lab may treat the gasoline in different compartments of a ship as a single batch only if the importer or lab has a strong basis to believe that the gasoline is homogeneous across the compartments, but such a determination would require analysis of the different compartment samples for most of the RFG parameters. The

minimum set of parameters that may be used to establish homogeneity are the following: API Gravity, sulfur, benzene, E200, and E300. Only if the different compartment of a ship have the same values for each of these parameters, within the ASTM repeatability range for each parameter, may the gasoline in different ship compartments be considered to be homogeneous.

In the alternative, EPA will accept the analysis of samples collected from different ship compartments that are combined into a single volume-weighted composite sample, provided the compartments are off-loaded into a single shore tank. EPA believes such a composite sample would be representative of the overall quality of the gasoline in the multiple ship compartments, following the mixing of this gasoline in the shore tank. If the gasoline is not completely homogeneous when in the different ship compartments, presumably the gasoline will be mixed to the point of homogeneity in the shore tank.

As a second alternative, EPA will accept the analysis of samples collected from different ship compartments that are combined into a single volume-weighted composite sample, provided that each shore tank into which the imported RFG is off-loaded is also sampled and tested to establish that the imported RFG meets the downstream standards.<sup>6</sup> For example, in the case of RFG under the simple model, and in the absence of any survey ratchets, the benzene test result must be 1.30 wt% or less. Under this approach, any RFG contained in the shore tank before the imported RFG is added (the tank "bottom") must be sampled and tested for the downstream standards using the § 80.46 test methods. After the imported RFG is added to the tank, the entire tank again must be sampled and tested for the downstream standards using the § 80.46 test methods. The volume and properties of the tank bottom must then be subtracted from the post-addition test results, to mathematically determine the levels for the downstream standard parameters for the imported RFG. Only if these shore tank test results are within the downstream standards without the application of any enforcement tolerance may the ship composite sample be used to certify the imported RFG.

The rationale for this second alternative to treating each ship compartment as a separate batch is that the shore samples will ensure that even if the gasoline on the ship is not homogeneous, none of the gasoline violates the minimum and maximum standards.

Under either of these alternative approaches, a composite sample would be inappropriate to establish the RVP of imported RFG, because the process of preparing a composite sample renders any RVP result suspect. The importer and independent lab could, however, test a ship composite sample (if allowed as discussed above) for all properties other than RVP, and only separately analyze the compartment samples for RVP. The RVP of the multiple-compartment

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<sup>6</sup> The RFG downstream standards are the per-gallon maximums or minimums associated with the following average standards: under the simple model, oxygen and benzene, and RVP in the case of VOC-controlled RFG; under the complex model, oxygen, benzene, and NOx emissions performance, and VOC emissions performance in the case of VOC-controlled RFG.

batch could then be derived mathematically from the separate RVP analyses for each compartment. As in the case of conventional gasoline, the volume of imported RFG must be the off-loaded volume, and normally would be established by the independent lab based on shore tank measurements.

Any imported RFG that is sampled and tested using the composite approaches discussed above would be considered a single batch for purposes of assigning batch numbers and reporting to EPA.

The approaches for testing imported RFG involving composite samples from multiple ship compartments, as discussed above, would not be appropriate if the importer or independent lab has any reason to believe the gasoline will not be homogeneous when released from the import facility.