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**RFG/Anti-Dumping
Questions and Answers
November 28, 1994**

Name of Division
Office of Mobile Sources
U.S. Environmental Protection Agency

RFG/Anti-Dumping Questions and Answers, November 28, 1994

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through November 14, 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 November 14, 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

Standards/Models
Compliance on Average
Downstream Oxygenate Blending/Roxy
Registration/Recordkeeping/Reporting
California Enforcement Exemptions
Anti-Dumping Requirements

STANDARDS/MODELS

1. **Question:** Given EPA's stated intent in the preamble to the direct final rule of July 20, 1994, it is our interpretation of the RFG regulations is that refiners may certify and release a non-VOC controlled RBOB designated for blending with 10 volume % ethanol ("gasohol waiver"), provided the refinery's certification sample does not exceed 4.0 weight % oxygen. Is our interpretation correct?

Answer: EPA changed the range for both the simple and complex model from 3.5 weight % oxygen to 4.0 weight % oxygen in order to accommodate 10 volume % ethanol blends within a range of specific gravities. As noted in the preamble to the direct final rule, density variations in gasoline blendstocks may result in variation in the oxygen content of an oxygenated fuel on a weight percent basis despite the fact that the volume percent remains fixed. See 59 FR 36947. The preamble goes on to state that, as an example, the oxygen content of ethanol (expressed as weight %) may be as low as 3.4 and as high as 4.0.

Although the range in the models was changed, § 80.41(g)(2) continues to require that the oxygen maximum standard for simple model, non-VOC controlled RFG, shall be 3.5 weight %. The direct final rule did not correct this provision and it remains in effect. However, EPA believes that the maximum oxygen content provisions for non-VOC controlled RFG should accommodate legally blended oxygenates (i.e., oxygenates that meet the applicable Clean Air Act section 211(f) "substantially similar" and waiver provisions). EPA will make a change to reflect an allowance for appropriate weight percent oxygen levels in § 80.41(g)(2) in an appropriate rulemaking. In the meantime, EPA will permit oxygen levels for simple model, non-VOC controlled gasoline to be allowed to a level of 4.0 weight % oxygen. EPA is also aware of questions regarding analogous situations for downstream blending of oxygenates with VOC-controlled gasoline and its cap at 2.7 weight percent oxygen. EPA is continuing to study this issue.

COMPLIANCE ON AVERAGE

1. **Question:** Based on EPA's comments in the July 1, 1994 Question and Answer Document, we are to include all 1994 batches designated as RFG in the calculation of our first year average toxics calculation. We interpret this to mean that RFG-designated batches shipped before December 1, 1994 will also be included for the purpose of generating benzene and oxygen credits. Please confirm that our interpretation is correct.

Answer: Your interpretation is correct.

DOWNSTREAM OXYGENATE BLENDING/ROXY

1. **Question:** If a refiner produces "specified RBOB" for 3.5% oxygenate (for example, 10% vol EtOH) blending, and an oversight program shows that the downstream blender is adding less than 10% EtOH, who is liable for a compliance violation? If there a violation at all if the actual finished blend still meets the RFG specs? For example, if RBOB is formulated to meet RFG with 8% EtOH, but the refiner sells it as "10% EtOH" RBOB (and uses the 10% in the calculation of its non-oxygenate parameters) to encourage maximum ROXY credits, does an actual blend with 8% EtOH cause a violation?

Answer: If the downstream oxygenate blender is adding oxygenate in amounts other than that specified by the refiner of the RBOB, the blender would be liable for a violation of the regulations regardless of whether the gasoline meets the downstream standards. In such a case, the RBOB refiner would have to recalculate its batch values for the RBOB to reflect that actual level of blending that occurred (e.g., benzene and toxics emissions performance.)

2. **Question:** With respect to § 80.83(h)(3)(i), please confirm that the 7.8 RVP VOC rule described here only applies for determining renewable oxygenate compliance for ethanol and that we should only designate RFG as VOC-controlled for RFG compliance if it has an RVP no greater than 7.2.

Answer: Section 80.83(h) applies only to California gasoline destined for sale in a federal RFG covered area located within the State of California. These covered areas are Los Angeles and San Diego. Sections 80.83(h)(3)(i) and (ii) refer to the State of California's volatility standard of 7.8 psi prior to March 1, 1996 and 7.0 psi thereafter. "California gasoline" is considered to be designated as VOC-controlled for purposes of the renewable oxygenate requirement if it meets the appropriate RVP standard of 7.0 or 7.8 psi. Under § 80.83(a), ethanol is not considered a renewable oxygenate if used in this "VOC controlled" California gasoline or RBOB.

3. **Question:** In § 80.69(a)(2), the procedure for sampling and analysis of RBOB is defined. A hand blend with the specified type and amount of oxygenate is to be prepared and the blended sample analyzed, with those results to be used in compliance calculations. In §80.67(g), compliance totals are defined as the sum of each batch's volume times its parameters. What volume is to be used for RBOB in computing the compliance total -- the actual RBOB volume produced or the implicit volume after blending with the specified oxygenate volume and type?

Answer: The volume after blending with the specified oxygenate volume and type (i.e., the RBOB volume plus oxygenate) should be used for computing the compliance total.

4. **Question:** For the ROXY requirement, does the volume of RFG or RBOB in the compliance calculations include the ROXY volume?

Answer: The equation at § 80.83(d) indicates that the volume to use for compliance calculations is the volume of gasoline or RBOB batch. The intent of the regulations, however, is to use the volume of RFG including oxygenate and renewable oxygenate, or the volume of RFG produced using the refiner's RBOB, including oxygenate and renewable oxygenate, for computing the compliance total. EPA intends to revise the regulation to reflect this in an appropriate rulemaking. In the meantime, the volume of RFG including oxygenate or renewable oxygenate, or the volume of RFG produced using the refiner's RBOB, including oxygenate and renewable oxygenate, should be used in the compliance calculations.

REGISTRATION/RECORDKEEPING/REPORTING

1. **Question:** Regarding a batch for which the blend completion date is on the last day of the EPA reporting quarter, what if shipments, as EPA defines them, are not complete by the time reporting for that quarter is required? Is there going to be any facility to allow a reporter to carry over batches to the next period if the shipments would extend near the reporting deadline?

Answer: Sections 80.65(c) and 80.101(d)(1) require refiners to include in compliance calculations each batch of gasoline that is "produced." As a result, a batch of gasoline should be included in the averaging period when the batch is produced, rather than when the batch is shipped from the refinery. EPA believes that a reasonable interpretation of when a batch is finished being "produced" is the point when the sample is collected which will form the basis for certification of the batch, or in the case of RFG, the point when the batch sample is collected by the independent lab. Even if an RFG batch later is found to be off-spec and corrected before the batch leaves the refinery, the original batch number remains valid, but with a volume of zero (see the answer to Question 3, Section VII.E., in the July 1, 1994 Question and Answer Document.)

Thus, if a refiner combines blendstocks to produce a batch of gasoline and collects the certification sample at 11 PM on December 31, 1995, that batch would be included in the 1995 compliance calculations even though the sample is not analyzed or the gasoline moved from the blending tank until 1996. The volume of the batch would be the volume moved from the blend tank, however, which may not be known until some point in 1996. EPA believes it is likely a party always will know the batch volume by the time reports are due, because batch reports are not due to be filed with EPA until about sixty days following the end of each quarter. In the unlikely event that the gasoline is not moved from the blend tank before the report is due, the refiner should include a batch report based on the volume determined by the independent laboratory. An amended report may be filed subsequent to filing the report for the quarter in which the batch was produced to report the actual shipped volume.

In the case of an in-line blended batch, the batch should be included in the averaging period which encompasses the date and time of the ending point for the batch, because the certification sample will not be fully collected until that point.

2. **Question:** Are there any reporting requirements associated with adding oxygenate to RFG designated as OPRG to achieve the oxygen level required by some cities during the winter months?

Answer: Section 80.69(f) provides that any oxygenate blender may blend oxygenate with RFG that is designated as OPRG without meeting the recordkeeping and reporting requirements that otherwise apply to oxygenate blenders, provided that the RFG produced is: 1) used in an oxygenate fuels program control area during an oxygenated fuels program control period; and 2) "substantially similar" under § 211(f)(1) of the CAA, or has been granted a waiver under § 211(f)(4) of the CAA.

3. **Question:** Question 14, Section VI.C., of the July 1, 1994 Question and Answer Document provides an example of the creation and addition of two different batches to form a composite mixture. All or a portion of this composite is shipped as RFG. How will the refinery account for this shipment under recordkeeping and averaging requirements (assuming the refinery is averaging), based on the scenario outlined in Question 14?

Answer: Question 14 relates to in-line blending operations that have petitioned EPA for and received an exemption from the independent sampling and testing requirements of the RFG regulations. In such petitions, refiners often define a "batch" of in-line blended gasoline as the volume of gasoline blended by the operation through the blender. The gasoline is then certified by the refiner based on the volume that has been sampled by an automated compositor for testing. Once it is certified, this product can then be pumped directly into a pipeline or into a tank for storage. At this point, it is fungible with other similar product. Accordingly, the batch volume that the refinery accounts for under the recordkeeping requirements and for purposes of averaging is the volume of product that is certified before the product goes into the pipeline or is stored in a storage tank where it may be fungibly mixed.

CALIFORNIA ENFORCEMENT EXEMPTIONS

1. **Question:** The July 1, 1994 Question and Answer Document discusses the antidumping provisions that impact California gasoline -- a non-RFG California gasoline before 3/1/96 must meet all antidumping requirements (i.e., volumes and properties.) After 3/1/96, California gasoline is exempt from certain enforcement requirements of the antidumping rules. Does this mean that both the fuel parameters and fuel volumes associated with California gasoline are exempt from the antidumping rules, or are the volumes still included when comparing against the 1990 baseline volumes?

Answer: Section 80.81(d) provides that, subsequent to March 1, 1996, refiners, importers and oxygenate blenders of California gasoline shall demonstrate compliance with the RFG and anti-dumping standards specified in §§ 80.41 and 80.90 by excluding the volume and properties of its California gasoline from all of the gasoline (RFG or conventional) it produces

that is not California gasoline. This section also provides that this does not exempt any refinery from demonstrating compliance with the standards for all gasoline that it produces or imports. While refiners are generally exempt from recordkeeping, reporting and various other provisions for California gasoline, they are not exempt from the RFG and anti-dumping standards themselves.

ANTI-DUMPING REQUIREMENTS

1. **Question:** The July 1, 1994 Question and Answer Document indicates that sulfur, T90, and olefins are the only simple model RFG standards that can be seen on a refinery aggregated basis. We interpret this clarification to apply only to simple model RFG compliance and believe that it does not affect the anti-dumping provisions of § 80.101(b). Please confirm that all simple model anti-dumping standards can be met on a refinery-aggregate basis including sulfur, olefins, T90, and the exhaust benzene standards.

Answer: All simple model anti-dumping standards can be met on a refinery-aggregate basis pursuant to § 80.101(h).