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RFG/Anti-Dumping Questions and Answers January 9, 1995

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

RFG/Anti-Dumping Questions and Answers, January 9, 1995

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through December 26,1994, 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 there quirements 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 December 26, 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

SAMPLING AND TESTING PROCEDURES

[NOTE: The following is an update to Question 1, Section V.A., of the July 1, 1994 Question and Answer Document to clarify that the term "per gallon" standards refers to the downstream per gallon minimum and maximum standards.]

1. **Question:** How should storage tanks be sampled for RFG?

Answer: Section 80.65(e)(1) of the regulations states that, "Each refiner or importer shall determine the value of each of the [reformulated gasoline] properties for each batch of reformulated gasoline it produces or imports prior to the gasoline leaving the refinery or import facility, by collecting and analyzing a representative sample of gasoline taken from the batch." "Batch of reformulated gasoline" is defined at § 80.2(gg) as "a quantity of reformulated gasoline which is homogeneous with regard to those properties which are specified for reformulated gasoline certification."

Samples that accurately represent batch properties are necessary in order to determine if RFG standards are being met. Therefore, the first concern of batch sampling is to determine whether or not the tank contents are homogeneous. Upper, middle, and lower gravity analyses constitute an appropriate determination of homogeneity. Where it is found that tank contents are not homogeneous, further mixing should be performed before collecting a representative sample for reformulated gasoline analysis.

Product stratification should also be avoided downstream of refiner or importer facilities, because samples must meet the downstream per gallon minimum and maximum standards, and stratification could result in a portion of the gasoline in a tank being out of compliance with the per gallon minimum and maximum standards. For further discussion of homogeneity, see the Independent Sampling and Testing Section, Question 20.

Storage tanks should be sampled according to 40 CFR part 80, Appendix D, using the method that will best represent the contents of the tank or batch. EPA expects the refiner, importer, or independent laboratory to use its best professional judgment in determining the procedures that are necessary in order to best represent a given batch within the guidelines of Appendix D.

EPA preference for sampling storage tanks is a "running" or "all-levels" sample collected from an un-confined (no gauge tube) roof port. A "running" or "all levels" sample collected from a perforated gauge tube is the next best choice. In no case should a sample be collected from a solid gauge tube.

EPA prefers to collect "running" samples as opposed to "all-levels" samples for two reasons. First, assuming both "all-levels and "running" samples are collected with uniform lowering and retrieval rates, the "running" procedure achieves better representation of the tank

contents than the "all-levels" procedure. This occurs because with the "running" procedure, one half of the sample is collected when lowering the apparatus, and the column sampled is undisturbed at that point. The second reason is that "running" samples are easier to collect than "all-levels" samples because the sample collector is not required to stopper the sample bottle.

If a tank cannot be bottle sampled from the top, then tap sampling is an appropriate substitute. For best representation, a single composite should be collected by proportionally filling the sample container from all available taps. If homogeneity is well documented, the entire sample may be collected from a single tap. If a refinery or importer tank has no roof sampling port or sampling taps, then a pipeline sample is the only other sampling means that is possible. Pipeline sampling is discussed in Question 2 of this section.

In the case of downstream quality assurance sampling from a storage tank which does not have a roof sampling port or taps for sampling, a sample collected from a truck or barge that has just loaded from that tank is marginally acceptable. The truck or barge should be completely empty before loading, and a "running" sample should be collected from the truck or barge compartment.

Appendix D contains general instructions and precautions that must be followed when choosing sampling equipment and containers, and when collecting samples. RVP is the most sensitive reformulated gasoline property, relative to sampling, and therefore precautions to prevent loss of "light ends" must be followed carefully. Also, sampling containers must be clean and rinsed well with the gasoline to be sampled in order that the sample is not contaminated, for example, with trace amounts of heavy metals. When collecting tap samples, the tap and connecting piping must be completely flushed, and the sample container must be bottom filled strictly according to the procedure outlined in Appendix D. Always label the container as soon as possible, and note the location of the sampling point and method of collection.

TEST METHODS

[NOTE: The following is an update to Question 36, Section V.B., of the July 1, 1994 Question and Answer Document, which adds a paragraph discussing how to accomplish the butane adjustment in the compositing procedure where batch size varies.]

36. **Question:** Section 80.101(i) provides a composite sampling and testing option to determine conventional gasoline properties. One provision to this option is that composite samples will need to be prepared as described in § 80.91(d)(4)(iii). Part B of this procedure requires that "properties of the retained samples shall be adjusted for loss of butane by comparing the RVP measured right after blending with the RVP determined at the time that the supplemental properties are measured." No further details are given. Please detail how this process would work.

Answer: The best process would be to avoid the butane adjustment by blending the fuels in such a way that butane loss is avoided. Practically, this means having all fuel samples at or below 32 degrees Fahrenheit before their containers are opened for blending. In practice, however, some loss may occur. Three assumptions are made in the adjustment procedure.

The first of these is that RVP blends linearly with volume. This is not true if ethanol fuels are included, so ethanol blended fuels must be treated separately. If ethanol blended fuels are to be composited, a separate composite must be maintained for them. If different ethanol blended fuels are to be produced, such as 2.0% oxygen and 3.7% oxygen fuels, these must be composited separately. In operation, the maintenance of several composites may be necessary, one containing all hydrocarbon fuels, one with 2.0% oxygen from ethanol, and one with 3.7% oxygen from ethanol. In general, any single ethanol fuel composite may span a range of up to 0.5% oxygen. In other words, samples containing from 3.3% to 3.8% oxygen may be composited. If other samples are produced, they will require a separate composite. Since fuels containing MTBE and similar ethers do not affect RVP as dramatically, they may be combined with the hydrocarbon fuels.

The second assumption is that all the loss in RVP observed is due to evaporation of n-butane. In reality, this is not true, as virtually all of the isobutane and some of the pentanes will be lost. However, considering the difficulty of ascertaining the exact species lost, this is a reasonable approximation.

The final assumption is that the RVP of n-butane is 51.6 psi. This value was taken from a Phillips Petroleum Reference Data circular (bull.no.521).

The technique for producing a composite sample would require that additions to any composite be of consistent volume, 100 ml for example. Using this method, the final expected RVP of the composite would be the simple arithmetic average of the included samples. If the measured RVP of the composite is different than this calculated value, any measured property should be adjusted for the volume loss due to butane. This is done by calculating the quantity of n-butane required to bring the composite to its original RVP. As an example, the following calculation would result from a composite of 80 samples at 100 ml each. The calculated average RVP should be 7.20 psi, and the measured RVP of the composite is 6.60 psi.

$$6.6(8000 - z) + 51.6(z) = 7.2(8000) \quad \text{(I)}$$

$$52{,}800 - 6.6(z) + 51.6(z) = 57{,}600 \quad \text{(II)}$$

$$45.0(z) = 4{,}800 \quad \text{(III)}$$

$$z = 106.7 \quad \text{(IV)}$$

$$106.7/(8000) - 106.7) = 1.35\% \quad \text{(V)}$$

This means that 1.35 volume percent butane must be added to bring the composite sample to its original RVP. This is the volume correction that must be applied to all other measured properties. For intrinsic properties, such as the concentration of benzene, this correction is applied as a ratio, so that a measured concentration of benzene in the composite would be reduced by 1.35%. As an example of this, where the measured benzene concentration is 0.925%

$$0.925(8000 - 106.7) = (b)8000 \qquad \text{(VI)}$$

$$b = 0.913 \qquad \text{(VII)}$$

The corrected benzene concentration 0.913% by volume. This type of correction would also be applied to oxygenate, sulfur, aromatic, and olefin measurements.

This is a simplified version of the correction calculation, and assumes a consistent product batch size. In cases where the batch size varies, the sample removed for composite must be proportional to the size of the batch. For example, if batches totaling 50,000, 30,000, and 80,000 bbls. are produced, one might remove 100, 60, and 160 ml from the respective batches. This amounts to volume weighting the composite for batch sizes. The calculated average RVP value is a weighted average of the original values:

$$RVP1(Vol1) + RVP2(Vol2) + RVP3(Vol3)....= RVP(avg)(Vol(total))$$

The volume compensation is calculated exactly as in the simplified case.

Distillation measurements require a different type of correction, since any evaporative loss due to butane would affect the initial portion of the distillation curve. In fact, during the test, there is loss, and this loss is assumed to be due to the inability of the still to recover butane. The most appropriate way to apply the correction here would be to begin the distillation with only 98.6 ml of fuel. The result will be a larger loss. This measured loss will be the correction for butane loss, and will yield corrected values for the distillation. If E200 and E300 values are needed, they are taken from the corrected curve.

[NOTE: The following is an update to Question 40, Section V.B., of the July 1, 1994 Question and Answer Document, which adds a paragraph at the end of the answer.]

40. **Question:** What is the frequency of correlation samples for laboratories to remain qualified for reform testing?

Answer: There is no definition of "qualified" laboratories under the regulations. The principle requirement for correlation relates to the use of one of the alternate methods allowed until 1/1/97.

When one elects to use ASTM D1319 for measuring aromatic content in gasoline, or ASTM D4815 for the measurement of oxygenates in gasoline, correlation to the regulatory methods must be established. The principle reason for this requirement is the operator dependent nature of D1319 and D4815. This operator dependence is echoed by the relatively large reproducibility of these methods. Because of the operator dependence, each facility (or in some cases, each operator) must establish its own correlation to the appropriate regulatory methods. This correlation need not be established via an internal route, participation in an outside program or ongoing exchange group may be sufficient. The actual number of tests performed will depend on the quality of the correlation. In general, some initial group of tests will be necessary, perhaps from 15 to 30, to establish the nature of one's correlation. If both methods report identical numbers, this may be enough, and all that would be required in addition would be a few samples a month to verify that no shift has occurred.

If this initial effort describes a bias, considerably more effort may be necessary. The object would be either to describe the bias via a correlation equation, or eliminate the bias via improvement (or alteration) in the technique of the operator. The effort required will be determined by the difficulty in eliminating the bias or producing the equation. Following this, some number of samples should be run on an ongoing basis, to confirm that no shifts have occurred. Again, this number will be determined by the individual's confidence in his established correlation.

In practice, this means that each laboratory must establish this correlation if it intends to measure aromatics by ASTM D1319, or oxygenates by ASTM D4815. This correlation testing is done to define a bias, or show that none exists. It is not appropriate to include reproducibility in this discussion, since the intention is to correlate the mean of one method with the mean of a second method. In all cases, the fuel must meet its intended aromatics level as measured by GC/MS, and its intended oxygenates level as measured by OFID.

RFG GENERAL REQUIREMENTS

1. **Question:** Can a company ship, sell, or offer for sale conventional gasoline to a retailer or wholesaler operating on an Indian Reservation in an ozone nonattainment area which has been opted-in by the state? Can a company sell conventional gasoline to a wholesaler who supplies a retailer or wholesaler who is operating on an Indian Reservation in an ozone nonattainment area which has been opted-in by the state?

Answer: The Clean Air Act (CAA) specifies the areas that must be subject to the reformulated gasoline (RFG) program. These "covered areas" are: (1) the nine major metropolitan areas with the worst (highest) ozone levels; and (2) any area reclassified as a severe ozone nonattainment area (effective one year after reclassification). See CAA § 211(k)(10)(D). This statutorily-prescribed component of the RFG program applies with equal force to all covered areas, including all affected State and Tribal areas.

The CAA also allows the "Governor of a State" to voluntarily "opt-in" and subject any marginal, moderate, serious or severe ozone nonattainment area in the State to the RFG program. See CAA § 211(k)(6). As explained in the discussion below, a Governor's application to opt-in to the RFG program includes all affected ozone nonattainment areas within the State's jurisdiction but does not include any lands within the jurisdiction of a Federally recognized Indian tribe.

The term "State" is specifically defined in section 302(d) of the CAA and does not include Indian Tribes. Rather, the term "Indian tribe" is independently defined in section 302(r) to include any Federally recognized "tribe, band nation, or other organized group or community, including any Alaska Native village."[1] Compare also CAA § 302(b)(1)-(4) with CAA § 302(b)(5).

Several other provisions of the CAA evince congressional intent not to treat Federally recognized Indian Tribes as subdivisions of States under the CAA. For example, section 164(c) provides that "[l]ands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated" for purposes of the Prevention of Significant Deterioration of Air Quality program "only by the appropriate Indian governing body." See also CAA § 164(e). Section 301(d)(2) of the CAA authorizes EPA to issue regulations specifying those provisions of the CAA for which it is appropriate "to treat Indian Tribes as States."[2] Hence, section 301(d) of the CAA provides for treating Tribes in the same manner as States, not as governmental

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[1] The Department of the Interior periodically publishes a list of Federally recognized Tribes. See 58 FR 54364 (Oct. 21, 1993).

[2] Further, section 301(d)(2)(B) addresses the potential jurisdictional scope of the resulting Tribal CAA program submittals, authorizing EPA to treat Tribes in the same manner as States for "the management and protection of air resources within the exterior boundaries of the reservation or other areas within the tribe's jurisdiction." EPA has proposed to interpret section 301(d) and other provisions of the CAA as granting Tribes--approved by EPA to administer CAA programs in the same manner as States--authority over all air resources within the exterior boundaries of a reservation for such programs. EPA has explained that "[t]his grant of authority by Congress would enable such Tribes to address conduct on all lands, including non-Indian owned fee lands, within the exterior boundaries of a reservation." EPA also proposed to interpret the language in section 301(d)(2)(B) providing for Tribal management and protection of air resources in "other areas within the Tribe's jurisdiction" to authorize potential Tribal jurisdiction under the CAA over areas that lie outside the exterior boundaries of a reservation, upon a fact-based showing of a Tribe's inherent authority over sources located on such lands. See 59 FR 43956, 43958-43960 (Aug. 25, 1994).

subdivisions of States. EPA has issued proposed rules that would treat Tribes in the same manner as States for virtually all CAA programs. See 59 FR 43956 (Aug. 25, 1994).

In addition, Federal Indian law and policy direct EPA to treat Tribes as sovereign governments not as subdivisions of States. Settled principles of Indian law provide that "States are generally precluded from exercising jurisdiction over Indians in Indian country unless Congress has clearly expressed an intention to permit it." Washington Department of Ecology, 752 F.2d at 1469-1479 (citations omitted); see also United States v. Mazurie, 419 U.S. 544, 556 (1975) (the inherent sovereign authority of Indian Tribes extends "over both their members and their territory"); Montana v. United States, 450 U.S. 544, 556-557 (1981) (Tribes generally have extensive authority to regulate activities on lands that are held by the United States in trust for the Tribe); Montana, 450 U.S. at 566 (a Tribe "may...retain inherent power to exercise civil authority over the conduct of non-Indians on fee lands within its reservation when that conduct threatens or has some direct effect on the...health or welfare of the tribe").

Federal and Agency Tribal policy also direct EPA to treat Tribes as sovereign governments. On January 24, 1983, the President issued a Federal Indian Policy stressing two related themes: (1) that the Federal government will pursue the principle of Indian "self-government" and (2) that it will work directly with Tribal governments on a "government-to-government" basis. An April 29, 1994 Presidential Memorandum reiterated that the rights of sovereign Tribal governments must be fully respected. 59 FR 22,951 (May 4, 1994).

EPA's Tribal policies commit to certain principles, including the following:

> EPA recognizes Tribal Governments as sovereign entities with primary authority and responsibility for the reservation populace. Accordingly, EPA will work directly with Tribal Governments as the independent authority for reservation affairs, and not as the political subdivisions of States or other governmental units.
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> In keeping with the principal of Indian self-government, the Agency will view Tribal Governments as the appropriate non-Federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace. Just as EPA's deliberations and activities have traditionally involved interests and/or participation of State Governments, EPA will look directly to Tribal Governments to play this lead role for matters affecting reservation environments.

November 8, 1984 "EPA Policy for the Administration of Environmental Programs on Indian Reservations"; Policy Reaffirmed by Administrator Carol M. Browner in a Memorandum issued on March 14, 1994.

Accordingly, a Governor's request to opt-in to the RFG program does not bind areas within the jurisdiction of Federally recognized Indian Tribes. The "opt-in" portion of the RFG program is voluntary and based on an application by the Governor of a State. Treating a request by a Governor of a State to voluntarily opt-in to the RFG program as binding on areas within the jurisdiction of Federally recognized Indian Tribes would fundamentally be at odds with the voluntary premise of the opt-in program, in light of other provisions of the CAA, and Federal Indian law and policy that do not treat Tribes as subdivisions of States.

Federally mandated and implemented fuels programs apply to areas within the jurisdiction of Federally recognized Indian Tribes. See 59 FR 43960-61. Thus, areas within Tribal jurisdiction that are located within the nine statutorily prescribed covered areas are subject to the RFG regulations, and other areas within Tribal jurisdiction are subject to the anti-dumping regulations. However, where an area within Tribal jurisdiction is not located within one of the nine statutorily-prescribed covered areas: (1) the sale of conventional gasoline to a retailer or distributor operating within the jurisdiction of a Federally recognized Indian tribe is not prohibited, even if surrounded by a State opt-in area; and (2) the sale of conventional gasoline intended for sale in areas within Tribal jurisdiction to a distributor located within a State opt-in area but outside the Tribal area is also not prohibited. All conventional gasoline is required to be accompanied by product transfer documents that identify it as conventional gasoline not to be used in a RFG covered area. See 40 CFR § 80.106(a)(1)(vii).

Finally, any Tribes interested in opting in to the RFG program for areas within their jurisdiction should contact Joanne Jackson Stephens at (303) 668-4276. As noted, EPA has authority to treat Federally recognized Tribes in the same manner as States for CAA programs and has already proposed to do so for virtually all CAA programs including RFG.

2. **Question:** Is a company considered an importer under the RFG regulations if it has a refinery located in the Virgin Islands or Guam and transports gasoline produced at this refinery to a State?

Answer: Section 80.2(r) defines "importer" as "a person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States...." Under § 302(d), Puerto Rico, Guam, American Samoa, the Virgin Islands and the Northern Mariana Islands are included in the definition of "State" for purposes of compliance with the RFG and anti-dumping regulations. A company that produces gasoline at a refinery located in Puerto Rico, Guam, American Samoa, the Virgin Islands or the Northern Mariana Islands, therefore, is a refiner, rather than an importer, of that gasoline. In addition, gasoline transported into Puerto Rico, Guam, American Samoa, the Virgin Islands or the Northern Mariana Islands from outside any "State" would be imported gasoline that must be included in the importer's RFG or anti-dumping compliance calculations.

DOWNSTREAM OXYGENATE BLENDING/ROXY

1. **Question:** If a downstream terminal has RFG non-OPRG in its inventory and then purchases OPRG that contains at least 2.0% oxygen by weight, can the downstream terminal operator commingle the non-OPRG and OPRG and market the commingled product as RFG non-OPRG with all the required product transfer documentation messaging for non-OPRG?

Answer: OPRG RFG must be segregated from non-OPRG RFG unless the OPRG RFG contains a minimum of 2.0 wt% oxygen. See Question 9, Section IX.B., of the July 1, 1994 Question and Answer Document. Accordingly, a downstream terminal may commingle OPRG RFG which contains a minimum of 2.0 wt% oxygen with non-OPRG RFG and market the product as non-OPRG RFG with the appropriate product transfer documentation.

2. **Question:** In the case of RFG oxygenate blenders who splash blend oxygenate in trucks and who wish to meet the oxygen standard on average, what options are available for establishing the oxygen content of the RFG produced? Specifically, is there any option other than every-batch sampling and testing, which would require sampling and testing every truck (or every truck compartment) for a truck splash blending operation?

Answer: Under § 80.69(b)(4), an RFG oxygenate blender who meets the oxygen standard on average is required to sample and test each batch of RFG produced to determine the batch's oxygen content, and assign a number to the batch for reporting purposes. This every-batch sampling and testing requirement applies regardless of whether the oxygenate blending is carried out in a large terminal tank or through splash blending in trucks.

EPA agrees that every-batch sampling and testing by an oxygenate splash blender would be difficult. As a result, an oxygenate blender may meet the oxygen standard on average without conducting every-batch sampling and testing provided the oxygenate blender meets the following requirements:

1. Computer-controlled oxygenate blending required. The oxygenate blending must be carried out using computer-controlled in-line or sequential blending, that operates in such a manner that the volumes of oxygenate and RBOB are automatically dispensed when a particular grade of gasoline is selected for loading into a truck, and no operator instructions are required regarding the oxygenate-RBOB proportions when an individual truck is loaded. Thus, this alternative averaging approach would not be available where the oxygenate and RBOB are separately metered into a truck, regardless of whether the separate metering occurs at the same terminal or at different terminals.

2. Oxygenate blender must operate blending equipment. The oxygenate blender must be the party who operates the computer-controlled in-line or sequential blending equipment. Thus, this alternative averaging approach would not be available to a party who receives delivery of splash blended RFG into trucks at a terminal if the terminal is not operated by that party, regardless of whether the receiving party is a registered oxygenate blender.

3. Compliance calculations. The oxygenate blender may base its compliance calculations on the volumes and properties of RBOB and oxygenate used during a period not longer than one calendar month. In calculating the oxygen content of the RFG produced, the oxygenate blender may use assumptions regarding the specific gravities of the oxygenate and RBOB blended, or in the alternative the oxygenate blender may use the measured specific gravities of all oxygenate and RBOB blended in the blending operation. Similarly with regard to the denaturant content of the ethanol (if used), an oxygenate blender may assume the denaturant content is 5 vol% of the ethanol used provided the blender obtains documents from the ethanol supplier which support this assumption and provided the quality assurance sampling and testing (described below) supports this assumption, or in the alternative the denaturant content of ethanol may be measured.

During each oxygen averaging period, however, an oxygenate blender must use only the assumed specific gravities or only the measured specific gravities for all compliance calculations for an oxygenate blending facility. Similarly, during each oxygen averaging period an oxygenate blender must use only the assumed denaturant content of ethanol (if used) or only the measured denaturant content for all compliance calculations for an oxygenate blending facility.

a. The wt% oxygen which may be claimed is calculated using the following equation:

$$oxygen = \left(\frac{(V_{oxygenate} \times d_{oxygenate} \times F_{oxygenate})}{(V_{RBOB} \times d_{RBOB}) + (V_{oxygenate} \times d_{oxygenate})} \right) X\ 1$$

Where

$W\%_{oxygen}$	=	weight percent oxygen in final blend
$V_{oxygenate}$	=	volume of oxygenate used, exclusive of denaturant
V_{RBOB}	=	volume of RBOB and denaturant used
$d_{oxygenate}$	=	specific gravity of denatured oxygenate used
d_{RBOB}	=	specific gravity of RBOB used
$F_{oxygenate}$	=	oxygen weight fraction for the oxygenate (0.3473 for ethanol; 0.1815 for MTBE)

b. In the case of an oxygenate blender who is calculating oxygen content using the assumptions for specific gravity, the following values must be used:

RBOB specific gravity	-	0.7420
denatured ethanol specific gravity	-	0.7939
MTBE specific gravity	-	0.7460

c. An oxygenate blender using the measured specific gravity option must determine, through sampling and testing, the specific gravity for each batch of oxygenate and RBOB used to produce RFG.

d. An oxygenate blender using the measured oxygenate purity option must determine, through sampling and testing, the purity for each batch of oxygenate used to produce RFG.

4. Quality assurance sampling and testing.

a. An oxygenate blender who meets the oxygen standard on average using the procedures described in this answer must conduct a program of quality assurance sampling and testing the RFG produced, using the procedures and at the frequencies specified under § 80.69(e)(2).

b. An oxygenate blender who assumes ethanol has a denaturant content of 5% must conduct a program of quality assurance sampling the ethanol used. The frequency of this sampling and testing must be at least one sample for every 1,500 barrels of ethanol used, or one sample every month, whichever is more frequent. In the event an ethanol sample from this quality assurance program has a denaturant content which is greater than 5%, the oxygenate blender must: 1) use the greater denaturant content for all oxygen compliance calculations for the ethanol that was tested, and; 2) increase the frequency of quality assurance sampling and testing to one sample for every 750 barrels or one sample every two weeks, and must maintain this frequency until four successive samples show an ethanol denaturant content that is equal to or less than 5%.

5. Attest procedures.

An oxygenate blender who meets the oxygen standard on average using the procedures described in this answer must commission an independent review of the oxygenate blending operation using persons with the qualifications specified in § 80.125. The agreed upon procedures for the independent review should follow the requirements specified in §§ 80.129(a) through (c). In addition, the attester should complete the following attest steps:

a. Obtain a listing of all oxygenate receipts for the previous year, test the mathematical accuracy of the volumetric calculations contained in the listing, and agree the

volumetric calculations of the oxygenate receipts to the calculations contained in the material balance analysis.

b. Obtain a listing of the monthly (or lesser period if used by the oxygenate blender) oxygen compliance calculations, test the mathematical accuracy of the listing, and agree the volumetric calculations to the material balance analysis. Select a representative sample of the oxygen compliance calculations, and determine whether the oxygenate blender is basing its calculations on the assumptions for specific gravity and the denaturant content (if ethanol is used), or on the assumed values. If the oxygenate blender is using measured values, obtain the oxygenate blender's test results for specific gravity and denaturant content for the RBOB and oxygenate used, and agree these test results to the compliance calculations. If the oxygenate blender is using the assumed values, agree the specific gravity and denaturant content used in the compliance calculations with the values specified in this procedure.

c. Agree the sampling and testing frequency of the oxygenate blender's quality assurance program with the sampling and testing rates required by this procedure.

6. Record retention.

The oxygenate blender must meet the record keeping requirements that are specified under §§ 80.74(a), (c), and (d), and in addition must meet the record keeping requirements specified under § 80.74(a) for any oxygenate sampling and testing that is performed.

In addition to the alternative averaging approach described above, EPA would be willing to consider other alternative approaches that ensure the integrity of the averaging program.

PRODUCT TRANSFER DOCUMENTATION

1. **Question:** We would like to preprint as much of the PTD information as possible on our bill of lading for gasoline sales at our terminals. We would like to print the following statement on all tickets: "Maximum RVP of 8.3 psi if gasoline is designated as VOC controlled for Region 1." This would enable us to have the same bill of lading for both the summer and winter period even though this statement would have no effect from for gasoline that is not designated as VOC controlled. Is this language acceptable?

Answer: A statement such as the one in the question would be acceptable assuming that the product is also properly identified as being either VOC controlled or not VOC controlled.

2. **Question:** In the case of an integrated company, which is registered as a refiner (we have a company number and four specific numbers for our four refineries that are registered), must our registration number appear on all product transfer documents where some part of our company is a transferor or transferee or only when the specific facilities that are registered are involved in the

transaction. Our understanding is that when, for example, we transfer product from one of our marketing terminals (which is not registered as a refiner, importer or oxygenate blender) to a retail gasoline station (also not registered as a refiner, importer or oxygenate blender) that we would not be required to show our EPA registration number on the transfer document; we would only be required to show it when one of our four registered refinery locations was involved in the transfer. Is this correct?

Answer: Section 80.77(j) requires, in the case of transferors or transferees who are refiners, importers or oxygenate blenders, that the EPA assigned registration numbers of those persons be included in the PTDs. Therefore, a company that has an EPA assigned registration number must include it on the PTDs for any transfer of gasoline from or to any of its facilities, whether or not the facility itself is one that is required to be registered. However, a transferor, such as a carrier, who is not owned by a company with a registration number, and who normally would not know whether the transferee (e.g., a retail outlet) is owned by a company that has a registration number, is not required to include the registration number of the transferee on the PTDs that the carrier leaves with the transferee.

INTERACTION WITH STATE PROGRAMS

1. **Question:** The Boston CMSA has not adopted or implemented an oxygenated gasoline program under § 211(m) of the CAA, and is seeking redesignation from its nonattainment status for CO. Do refiners that market RFG for that area have to designate their gasoline as OPRG this winter?

Answer: Under the RFG regulations, RFG must be designated as OPRG if it has an oxygen content greater than or equal to 2.0 wt%, and if it arrives at a terminal from which gasoline is dispensed for delivery to an oxygenated fuels control area within five days prior to the beginning of that area's control period for oxygenated gasoline. 40 CFR 80.65(d)(2)(iii)(A). The answer as to whether the gasoline "must" be designated as OPRG turns on whether the Boston CMSA is considered an oxygenated fuels control area for purposes of the RFG program.

An oxygenated fuels control area is defined, for purposes of the RFG regulations, as "a geographic area in which only oxygenated gasoline under the oxygenated gasoline program may be sold or dispensed, with boundaries determined by section 211(m) of the Act." 40 CFR 80.2(pp). Oxygenated fuels control areas, therefore, are those areas where states have adopted and implemented an oxygenated gasoline program under § 211(m) of the Act. Since Boston has not adopted and implemented such a program, the Boston CMSA is not a control area as defined in that section of the RFG regulations. A refiner, therefore, is not required to designate gasoline as OPRG that is marketed for the Boston CMSA until oxygenated gasoline is required by the State for that area. At the same time, a refiner is permitted to voluntarily designate RFG intended for the Boston CMSA as OPRG, as long as it contains at least 2.0 wt% oxygen. See § 80.65(d)(2)(iii)(B).