



EPA420-F-95-018
January 30, 1995

**RFG/Anti-Dumping
Questions and Answers
January 30, 1995**

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

RFG/ANTI-DUMPING QUESTIONS AND ANSWERS, JANUARY 30, 1995

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through January 16, 1995, 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 January 16, 1995, 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
RFG General Requirements
Downstream Oxygen Blending/Roxy
Registration/Recordkeeping/Reporting
Anti-Dumping Requirements

BASELINES

[NOTE: The following is a revision of the answer to Question 1, Section IV.L., of the July 1, 1994 Question and Answer Document.]

1. **Question:** For purposes of developing baselines, EPA has established limits for negligible levels of aromatics, olefins, benzene, sulfur and oxygen in gasoline blending components. If the levels of any of these properties are below these "negligible limits" (which are similar to very low level test reproducibility limits), they may have been considered to be zero in the refinery baseline development. As a result, a refinery may have a baseline parameter value that is below the test tolerance. At these low concentrations, they could be in technical violation of the regulations simply because of testing accuracy. How can this be handled?

Answer: Section 80.91(d)(3) was written to promote simplification of baseline determination and to excuse testing in certain limited circumstances. If a refiner can "show" that a fuel component exists only in negligible quantities in a blendstock stream, testing that stream for the component in question is not required, and a value of zero is assigned to that component. The fuel components to which this provision applies are aromatics, olefins, benzene, sulfur, and oxygen content. Negligible quantities are defined as levels which fall below the minimum levels given in §80.91(d)(3). Note that this provision is not a requirement, but rather an option.

The negligible quantities provision applies only to Method 3 data collection for two reasons. First, the provision applies only to blendstocks, not finished gasoline. Since only Method 2 and 3 data are blendstock data, the provision cannot apply to Method 1 data. Second, the primary action of the negligible quantities provision is to excuse testing in certain cases. The only time when a refiner must choose whether or not to do additional testing is when considering the sufficiency of its Method 3 data.

The negligible quantities provision reduces the burden placed on refiners collecting Method 3 data to satisfy the minimum data requirements. If a refiner can "show" that a fuel component exists only in negligible quantities, testing for the blendstock stream in question is not required. Instead, a refiner can assume that the level of a component is zero. Clearly, the "showing" indicates engineering judgement or past experience. A "showing" cannot refer to actual test data for the blendstock stream in question, because the very purpose of the negligible quantities provision is to excuse testing. Thus if a refiner has data on the stream in question, that data must be used in the determination of the baseline per §80.91(d)(1)(i)(B).

Although the provision was designed to simplify baseline determinations, some refiners questioned the use of zero values for components which existed in negligible quantities. Instead, they proposed the use of the minimum values given in the provision. Doing so would negate the original intention of the provision to simplify baseline determinations, but would also recognize that the minimum values represent values below which the components cannot be measured accurately. Although the use of the minimum values would result in slightly dirtier (more lenient) baselines, the EPA has decided to allow the use of the minimum values in lieu of zero values at the refiner's discretion.

A refiner could too easily generate a fictitiously more lenient baseline if EPA allowed test data to be used as a showing of negligible quantities. Such a refiner could test a given blendstock stream for components that are known to be essentially absent, and then lay claim to the minimum values given in the negligible quantities provision. The EPA has chosen to interpret the negligible quantities provision in a manner that is consistent with the original intent, provides additional flexibility, and yet maintains the primary goal of developing baselines which accurately represent a refiner's actual 1990 production.

One caveat on the use of actual data in the baseline determination should be clarified. If a refiner measures a blendstock stream and discovers that the measured component level of that stream is below the applicable range for the test method used, the low end of the applicable range may be substituted for the actual measured value in the baseline determination. For example, if a sulfur test method has an applicable range of 20 - 200 ppm and a blendstock stream is discovered to have a sulfur content of 11 ppm with that test method, the stream can be assumed to contain 20 ppm for the purposes of determining the baseline.

RFG GENERAL REQUIREMENTS

1. **Question:** Is it possible to get an exemption to use conventional gasoline in an RFG covered area for testing purposes?

Answer: The RFG regulations do not provide an exemption from the RFG requirements for testing purposes. However, EPA would consider allowing the use of conventional gasoline in an RFG covered area for purposes of a testing program if sufficient information is provided to EPA to verify the necessity of using non-RFG. Parties interested in pursuing such an allowance should contact Marilyn Bennett at (202) 233-9006.

DOWNSTREAM OXYGEN BLENDING/ROXY

1. **Question:** The regulations state that oxygen compliance on average should be equal to or greater 2.1 weight %. However, a recent question and answer seemed to imply that for OPRG gasolines that oxygen compliance on average should be equal to or greater than 2.7 weight % oxygen. Please explain.

Answer: For compliance on average, the RFG regulations require the average oxygen content to be at least 2.1 weight %, and there is no distinction between RFG that is designated as OPRG or non-OPRG (the downstream per gallon minimum oxygen standard is 1.5 wt % for any RFG). The average must be met separately for all RFG, all RFG that is not designated as OPRG, and under the simple model for VOC-controlled RFG. See § 80.67(f)(2). For per gallon compliance, oxygen content must be equal to or greater than 2.0 weight % for each gallon of RFG, regardless of whether the RFG is designated as OPRG or non-OPRG.

2. **Question:** Refiners or importers producing or importing RBOB must blend the proper amount of oxygen with the RBOB and test it for the regulated parameters pursuant to § 80.69(a)(2). Since they are not responsible for the oxygen content, must they test for oxygen, and, if they do test, must they report the results of the test for oxygen?

Answer: Section 80.69(a)(2) requires an RBOB producer or importer to add the specified type and amount of oxygenate to a representative sample of the RBOB and to determine the properties and characteristics of the resulting gasoline using the methodology specified in § 80.65(e). Section 80.69(a)(2) does not exclude oxygen from the parameters to be tested, so the refiner or importer should test for oxygen. Although the regulations do not require the RBOB producer or importer to report the oxygen results of the representative sample blend on its batch report, this test result, which would then be available for the attest engagement or in the event of an enforcement audit, would provide analytical verification of the amount of oxygen added to the representative sample blend.

3. **Question:** Section 80.65(e) states that oxygen, benzene, and RVP must be known for each batch of RFG prior to release from the refinery. Does this requirement apply to RBOB?

Answer: Section 80.75(a) requires a refiner or importer of RBOB to report the properties, pursuant to §§ 80.65 and 80.66, of each batch of RBOB it produces or imports. Section 80.69(a)(2) requires refiners and importers of RBOB to test a representative sample of the RBOB and specified oxygenate using the methodology specified in § 80.65(e). Section 80.65(e), therefore, clearly applies to RBOB for purposes of complying with these provisions. Consequently, although § 80.65(e) does not make specific reference to RBOB, EPA believes that the requirement of § 80.65(e) that certain test results must be obtained prior to release of the gasoline by the refiner or importer applies to RBOB. These test results would be reported to EPA pursuant to § 80.75(a) as the properties of the RBOB. Oxygen test results are not required prior to releasing RBOB, but the refiner or importer should retain oxygen test results to support the accuracy of the non-oxygen parameter testing.

REGISTRATION/RECORDKEEPING/REPORTING

1. **Question:** The regulations state that a party must register three months prior to producing or importing gasoline or blendstocks under the RFG and anti-dumping Program (40 CFR 80.76). If a party receives its ID numbers from EPA prior to the end of the three month period must he wait to produce or import?

Answer: The party does not need to wait. The three month period was intended to give EPA adequate time to process registrations. A party may proceed with production and importation after receiving an EPA registration number.

ANTI-DUMPING REQUIREMENTS

1. **Question:** Section 80.102(d)(3) requires all applicable blendstocks to be included in the refiner's or importer's calculation of blendstock-to-gasoline ratio for each averaging period unless the refiner or importer has sufficient evidence in the form of documentation that the blendstocks were: (i) exported; (ii) used for other than gasoline blending purposes; (iii) transferred to a refiner that used the blendstock as a "feedstock" in a refining process during which the blendstock underwent a substantial chemical or physical transformation; (iv) transferred between refineries which have been grouped pursuant to § 80.101(h) by a refiner for the purpose of determining compliance; or (v) used to produce California gasoline as defined in § 80.81(a)(2).

What documentation will EPA accept and under what conditions will it be required? For example, will we need to show documentation that benzene (or other gasoline boiling range chemicals) is not used in gasoline blending? Would a statement on the invoice such as "this product is sold for other than gasoline blending purposes and may not be used either directly or indirectly in the blending of gasoline in the U.S." serve to satisfy this requirement?

Answer: Section 80.102(d)(3) requires the refiner or importer to provide evidence that the blendstocks were actually used in one of the ways listed in the provision. Consequently, a general statement on the refiner's or importer's invoice, such as the one in the question, which merely warns that the product may not be used for blending gasoline, would be insufficient. Rather, this provision requires some form of evidence that the product was, in fact, used in one of these ways, such as a receipt from an exporter which includes a statement that the exporter purchased the particular product in question for export only, or other affirmative evidence from the transferee that would provide a reasonable basis to expect that the product in question is being used in a manner to justify its exclusion. The evidence required by § 80.102(d)(3) may be included on the routine business documents that memorialize the transaction between the parties. The actual content will depend on the particular use to which the blendstocks were put.