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**RFG/Anti-Dumping
Questions and Answers
October 31, 1995**

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

RFG/ANTI-DUMPING QUESTIONS AND ANSWERS, OCTOBER 31, 1995

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through October 3, 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 October 3, 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

Sampling and Testing
California Enforcement Exemptions
Importer Issues
Prohibitions

SAMPLING AND TESTING

[Note: The following is an update of Question 3, Sampling and Testing Procedures Section, from the July 1, 1994 Question and Answer document. This update eliminates the requirement that parties must petition to collect samples from storage tank taps that do not have "stingers."]

3. **Question:** Appendix D of the fuels regulations specifies that only taps extending at least 3 feet inside a tank are suitable for sampling. Is this requirement applicable for gasoline sampling? Is it necessary to secure EPA's acceptance before collecting samples from taps without such "stingers?"

Answer: Section 11.3 of Appendix D to 40 CFR Part 80, titled "Tap Sampling," states that where tap sampling is conducted, "[t]he tank should be equipped with at least three sampling taps... extending at least three feet inside the tank shell." The tap extension into the storage tank is commonly called a "stinger." Section 11.1 of Appendix D provides for the use of alternative procedures (such as sampling from taps without "stingers"), however, "if a mutually satisfactory agreement has been reached by the party involved and EPA and such agreement has been put in writing and signed by authorized officials."

EPA has learned that where storage tanks with floating roofs have tap samples, the taps do not have tap "stingers" because they would interfere with the floating roof. EPA also understands that most gasoline storage tanks have floating roofs. Moreover, EPA believes that tap "stingers" do not significantly improve the quality of samples collected, because most gasoline stratification manifests as horizontal strata in the gasoline being stored. As a result, EPA will not require parties to obtain agreement in advance to use sampling taps without "stingers," provided that the storage tank has a floating roof that would interfere with the tap "stingers," and the tank does not allow other types of sampling (e.g., a gauge tube). In addition, any party that certifies RFG or conventional gasoline using samples collected from a tap sampler must be able to demonstrate the gasoline in the storage tank was homogeneous. Several methods of establishing tank homogeneity have been described in other guidance. See, Sampling and Testing question 1 from the January 23, 1995 Question and Answer document.

1. **Question:** If a refiner used ASTM D-3120 to determine sulfur levels in 1990, its baseline sulfur value could be as low as 3 ppm, since this is the low end of the valid range for this test method. However, this refiner must use the EPA-specified test method for sulfur, ASTM D-2622, for compliance purposes beginning in 1995. Since D-2622 is only valid down to 10 ppm, this refiner could never meet the Simple Model caps for sulfur. What options does this refiner have?

Answer: Section 80.91(d)(5) specifies that in certain situations data from test methods other than those specified in § 80.46 may be used to establish refinery baselines. Regardless of the method used, however, for test results that are below the lower valid range limit for the analysis method used the lower valid range limit for the method may be used for establishing a baseline under § 80.91.

For purposes of compliance calculations, a refiner who measures a parameter at below the lower valid range limit for the analysis method also would use the lower valid range limit in its baseline determinations. One exception to this general rule applies in the case of a refiner who used a parameter test method for baseline development that is different from the regulatory test methods specified under § 80.46 for that parameter, and where the baseline test method had a lower valid range limit that is more stringent than the lower valid range limit for the regulatory test method. In this limited exception, during each compliance period a refiner who measures a parameter value at below the valid range for the regulatory test method may use a value of zero in compliance calculations.

This limited exception is illustrated with the following example. A refiner collected sulfur content data for purposes established a refinery baseline using ASTM method D-3120, which has a lower valid range limit of 3 ppm. This refiner could use a sulfur value of 3 ppm for any test result that is less than 3 ppm in the baseline calculations. For purposes of determining compliance with the RFG and anti-dumping standards, however, this same refiner is required under § 80.46(a) to measure the sulfur content of gasoline using ASTM method D-2622, which has a lower valid range limit of 10 ppm. Because the lower valid range limit for the baseline sulfur test method used by this refiner (3 ppm) is more stringent than the lower valid range limit for the regulatory sulfur test method (10 ppm), the refiner could use a sulfur value of zero for any compliance test result that is less than 10 ppm.

CALIFORNIA ENFORCEMENT EXEMPTIONS

1. **Question:** The California Exemption of § 80.81 requires that CARB II producers demonstrate compliance for the offset period (March 1, 1995 through February 28, 1996). May such a refiner shift from the Simple Model to the Early Use Complex Model beginning January 1, 1996? If so, how would the compliance calculations be performed?

Answer: Under § 80.41(I) a refiner may elect, for each calendar year averaging period, to be subject to either the simple model standards or the early complex model standards for the RFG produced, subject to certain conditions and constraints contained in §§ 80.41(I) and (j). In addition, under § 80.78(a)(9)(ii) and (iii) RFG and RBOB produced at a refinery or imported by an importer to meet the early complex model standards must be segregated from all other RFG and RBOB throughout the distribution system, including at the retail level. In effect, this segregation constraint makes early use of the complex model for RFG impractical in most situations.

Under § 80.81(b)(3), producers of "California gasoline," defined in § 80.81(a)(2), who meet standards on average are required to demonstrate compliance for two overlapping averaging periods: January 1, 1995 through December 31, 1995; and March 1, 1995 through February 29, 1996. Beginning March 1, 1996, when the CARB Phase II standards go into effect, certain enforcement exemptions apply to producers of California gasoline.

EPA will allow a producer of California gasoline who is subject to the overlapping averaging periods of § 80.81(b)(3) to elect to be subject to the early complex model standards for the second period (March 1, 1995 through February 29, 1996) even if this producer is subject to the simple model standards for the first period (January 1, 1995 through December 31, 1995). If this election is made, the gasoline produced during the entire second averaging period would be evaluated under the early complex model, however, only the RFG and RBOB produced by this refiner during the period January 1, 1996 through February 29, 1996, would be subject to the segregation constraints of § 80.78(a)(9).

IMPORTER ISSUES

[Note: The following is an update to Question 8 of Section IX-C of the July 1, 1995 Question and Answer Document, which was updated on August 29, 1994. This update adds an additional option for sampling and testing vessels of imported RFG.]

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 compartments 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 without the application of any enforcement tolerances.¹ 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

¹ 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.

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.

As a third 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 individual vessel compartment is shown, through sampling and testing, to meet all applicable downstream standards without the application of any enforcement tolerance.

The rationale for the second and third alternatives to treating each ship compartment as a separate batch is that these procedures 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 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.

1. **Question:** U.S. Customs regulations allow duty free entry for certain products produced in the United States that are exported from one U.S. port and imported at another U.S. port. These products are classified under U.S. Customs regulations as American Goods Returning to the U.S. This approach has been used, for example, in the case of certain gasoline and distillate products that are produced at U.S. refineries located on the Gulf coast and transported by ship to terminals located in Canada, and where the product then is transported by truck to markets in the United States. What standards and requirements apply to imported gasoline in the case of

gasoline that is classified by the U.S. Customs Service as American Goods Returning to the U.S.?

Answer: 40 CFR §§ 80.65 and 80.101 require importers of RFG or conventional gasoline to meet applicable standards, and to meet other requirements including sampling, testing, record keeping, and reporting. EPA considers gasoline to be imported for purposes of the RFG and anti-dumping programs if it consists, in whole or in part, of gasoline produced at refineries located outside the United States and imported into the United States. As a result, EPA does not consider gasoline to be imported for purposes of the RFG and anti-dumping programs where the gasoline has been classified as American Goods Returned to the U.S. by the U.S. Customs Service, provided that the gasoline was produced at a refinery located within the United States and has not been mixed with gasoline produced at a refinery located outside the U.S. This gasoline must be included in the RFG or anti-dumping compliance calculations by the producing refiner, using that refiner's individual baseline where applicable. In addition, because the gasoline has been included in the producing refiner's compliance calculations, all of the gasoline that was exported must ultimately be classified as American Goods Returned to the U.S. and none may be used in a foreign country. Moreover, the gasoline classified as American Goods Returned to the U.S. may not be combined with any gasoline produced at a foreign refinery prior to being imported into the United States.

Thus, under the example described in the question -- of gasoline produced at a U.S. refinery located on the Gulf coast and transported to markets in the U.S. via a terminal in Canada -- the Canadian terminal would need dedicated tankage for gasoline classified as American Goods Returned to the U.S. in order for the U.S. importer to avoid treating the gasoline as imported gasoline for the RFG or anti-dumping programs. Gasoline from these tanks could supply only U.S. markets, and the gasoline classified as American Goods Returned to the U.S. could not be fungibly mixed at the Canadian terminal with any gasoline produced at a non-U.S. refinery. In addition, none of the gasoline that was produced at the U.S. refinery and included in the refinery's compliance calculations could be used in Canadian markets.

Any refiner who includes in refinery compliance calculations gasoline that has been exported because the gasoline will be classified as American Goods Returned to the U.S., or any importer who excludes from the importer standards and requirements gasoline that has been so classified, should retain copies of all documents submitted to, or issued by, the U.S. Customs Service regarding this classification of the gasoline.

PROHIBITIONS

1. **Question:** Under section 80.78(a)(9), early use of complex model gasoline is limited by the requirement that all such gasoline be segregated throughout the distribution system from the point of production to the point of final sale or use. Because this restriction severely limits the

fungibility of the product, in most situations, early use complex model gasoline is not economically viable. However, if an RFG manufacturer were to produce early use complex model gasoline meeting all of the early use complex model requirements, and also meet all the simple model requirements applicable to refinery compliance, other than the requirements for sulfur, olefins and T90, would it still be necessary to segregate early use complex model gasoline?

Answer: This requirement for segregation of early use complex model gasoline throughout the system is based upon concerns regarding enforcement of standards downstream, e.g., at retail stations, and the effect complex model gasoline would have on the compliance survey. If complex model and simple model gasoline were freely mixed, downstream enforcement would be severely complicated since commingled complying gasolines might not meet all of the standards that are enforced downstream. Furthermore, it would not be apparent against which standards such gasoline should be judged for compliance. Similarly, with the compliance survey, it is required that a complex model survey component and a simple model survey component be performed.² If simple and complex model gasolines were commingled, survey results could not be appropriately judged against either complex or simple model standards. Both the enforcement concerns and the compliance survey concerns relate to the possibility that complex model gasoline may not meet the downstream simple model standards specified in 80.41(a), and (b). However, if the early use complex model gasoline were formulated to also meet all of the simple model standards except those for olefins, T90 and sulfur, this would have no impact either on downstream enforcement or on the compliance survey which is conducted downstream at retail stations. Furthermore, if such gasoline met all early use complex model requirements it would be at least as environmentally clean, and possibly cleaner than, comparable simple model gasoline. Therefore, early use complex model RFG gasoline need not be segregated from simple model gasoline if such gasoline also meets all simple model requirements other than those for olefins, T90 and sulfur. The presence of such gasoline in the marketplace will not in itself constitute a need for a complex model survey component since it will meet the downstream standards for the simple model and may be included in the simple model survey component. This gasoline should be reported as complex model gasoline under the RFG reporting requirements. The regulations require that parties intending to produce early use complex model gasoline notify EPA by November 2 of the previous year. However, for 1995 production, the reporting party could not have notified the Agency that early use complex model gasoline would be utilized under the scenario outlined here. Thus, for 1995 production, parties may utilize the flexibility offered here even if they have not met this notification requirement. However, previously submitted required batch reports must be resubmitted with the appropriate designation. Because this document is being posted on EPA's bulletin board such a short time prior to the November 2, 1995 deadline for notification

² Since no refiners have notified the Agency as required that they intend to utilize the allowance for early use complex model gasoline, up to this point, the Agency is considering the approval of survey plans which do not include a complex model survey component. Such a plan was approved in 1994 for 1995.

For 1996 production, EPA is extending the notification for early complex model use, under the scenario outlined here only, to December 1, 1995. A party producing gasoline under this scenario, must comply with all the product transfer documentation (PTD) requirements including 80.77(g)(2)(iii) but excluding 80.77(g)(1)(iii), 80.77(g)(2)(iv), and 80.77(h) on the condition that the PTD indicate that this gasoline is certified under the reformulated gasoline regulations and may be treated like any simple model gasoline subject to the same designations.