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**RFG/Anti-Dumping
Questions and Answers
December 5, 1994**

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

RFG/Anti-Dumping Questions and Answer, December 5, 1994

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through November 21, 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 21, 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

RFG General Requirements
Surveys
Downstream Oxygenate Blending
Registration/Recordkeeping/Reporting
Product Transfer Documentation

Anti-Dumping Requirements
Remedial Actions
Test Tolerances
Transition Issues
Importer Issues

RFG GENERAL REQUIREMENTS

1. **Question:** Do PTDs have to accompany gasoline going to customers who receive the product in containers of less than 550 gallons, since these customers are technically not wholesale purchaser-consumers under the regulations?

Answer: Section 80.77 provides that on each occasion when any person transfers custody or title to any RFG or RBOB, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor must provide PTDs to the transferee. Section 80.106 of the anti-dumping regulations similarly provides that parties must provide PTDs for the transfer of conventional gasoline. Under the PTD provisions, retailers are not required to provide PTDs to their customers when they dispense gasoline into the customers' motor vehicles, and wholesale purchaser-consumers are not required to provide PTDs to their drivers when gasoline is dispensed into the wholesale purchaser-consumer's vehicles. However, all other parties, including all distributors, are required to provide PTDs to the transferees of the gasoline they distribute. Consequently, any distributor who delivers gasoline to a customer's storage tank, even if the tank is less than a 550 gallon size (and the customer is not a wholesale purchaser-consumer under the regulations), is required to provide PTDs to the transferee. See also the replacement answer to Question 22, Section VI.A., of the July 1, 1994 Question and Answer Document below, which discusses that RFG must be dispensed to all consumers in RFG covered areas.

2. **Question:** Can bulk terminals located in covered areas receive conventional gasoline that is intended to be distributed to non-RFG areas?

Answer: Distributors, including bulk plants, located in covered areas may receive and distribute conventional gasoline to non-RFG areas, assuming all of the requirements of the regulations are met, including segregation of conventional gasoline from RFG, and the product transfer documentation statement at § 80.106(a)(1)(vii) which identifies the product as not meeting the requirements for RFG.

3. **Question:** Can a refiner produce RFG or RBOB at a refinery by combining blendstocks with RFG, RBOB, or conventional gasoline, as long as the RFG, RBOB, or conventional gasoline is backed out of the refiner's compliance calculations?

Answer: A refiner may produce RFG or RBOB at a refinery by combining blendstocks with previously-certified RFG (i.e., RFG that was produced at another refinery or oxygenate blending facility, or imported by another importer), but the previously-certified RFG must be excluded from the refiner's compliance calculations. See, § 80.65(i). RBOB may not be mixed with any other gasoline or blendstock, with very limited exceptions. See, § 80.78(a)(7).

RBOB and conventional gasoline, on the other hand, may not be used to produce RFG or RBOB under any circumstance, because such mixtures are prohibited by §§ 80.78(a)(7) and (10), respectively.

[Note: The following question and answer replaces Question 22, VI.A., of the July 1, 1994 Question and Answer document.]

VI.A.22. Question: Are any categories of gasoline users in the RFG covered areas exempt from the requirement to use RFG instead of conventional gasoline?

Answer: Section 211(k)(5) of the Clean Air Act describes the scope of the requirement to use RFG in the RFG covered areas:

(5) PROHIBITION. -- Effective beginning January 1, 1995, each of the following shall be a violation of this section:

(A) The sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area.

....

This statutory prohibition on the sale or dispensing of conventional gasoline in RFG covered areas is not restricted to gasoline used to fuel motor vehicles, but rather applies to all gasoline sold or dispensed within an RFG covered area to any consumer, regardless of the use. The prohibition, therefore, would include gasoline sold or dispensed for use in motor vehicles, boats, construction equipment, recreational vehicles, lawn and garden equipment, etc.

As a matter of enforcement discretion, however, EPA will not enforce the requirement to sell or dispense RFG in the case of two categories of gasoline: aviation gasoline sold or dispensed for use in aircraft; and racing gasoline sold or dispensed for use in racing vehicles during a sanctioned racing event. These exceptions would not apply if the aviation gasoline or racing gasoline is used other than in an aircraft, or in a racing vehicle in conjunction with a sanctioned racing event.

In the case of both aviation gasoline and racing gasoline, the gasoline must be clearly designated as such, and any person selling or dispensing these categories of gasoline must take appropriate steps to ensure the gasoline is used only in the limited circumstances described. In addition, EPA has strict guidelines as to what constitutes a racing vehicle, and the exception for racing gasoline applies only for gasoline used in such a vehicle. For further information on what constitutes a racing vehicle, contact EPA's Manufacturers Operations Division at (202) 233-9250.

The rationale for the exception for aviation gasoline used to fuel aircraft is based on safety considerations. Aviation gasoline must satisfy performance criteria that are relevant to the safe operation of aircraft, and this safety consideration outweighs the limited adverse environmental effect of conventional gasoline used in this manner. In addition, aircraft emissions normally would not be confined to the covered area where the aircraft is fueled, and could occur in significant part outside any RFG covered area. The rationale for the exception for racing gasoline is based on the special performance requirements for true race vehicles and the limited volumes of gasoline involved.

SURVEYS

1. **Question:** A prudent business approach to achieving year-averaging oxy content of RFG above 2.1% and meeting the ROXY requirements would be to over-oxygenate with EtOH in winter to generate ROXY credits and minimize oxy content (from MTBE, etc.) in summer to reduce cost (still staying about 1.5% O₂, of course). A survey of a market done in summer could therefore show O₂ levels at that point in time lower than 2.0% (but about 1.5%). What are the implications on "ratchet" of the area to higher O₂ levels?

Answer: Oxygen is evaluated on a year round basis under the survey. See § 80.68(c)(3). As a result, if oxygen levels in the summer that are below 2.0 wt% are off set by oxygen levels in the winter that are greater than 2.0 wt%, there would be no oxygen ratchet. However, there are separate week-long VOC surveys that depend in part on oxygen levels. Failure of a simple model VOC survey results in a ratchet of the RVP standard.

DOWNSTREAM OXYGENATE BLENDING

1. **Question:** Under the RFG regulations, RBOB cannot be mixed with RFG. However, normal tank blending of oxygenates will require the presence of residual "heels" of RFG from prior batches of RBOB and oxygenate blending, or routinely large portions of the preceding batch impossible to completely move into a pipeline shipment prior to receipt of more RBOB. Will EPA confirm that this mixing is not the subject of the prohibition against mixing RFG and RBOB provided no material is transferred from the blending tank between the time of new RBOB receipt (with oxygenate type and amount matching previous RBOB batches) and addition of the specified type and amount of oxygenate? Testing of finished RFG for required oxygen content and volume would be conducted in accordance with the regulations.

Answer: EPA would not treat the prohibition against mixing RFG and RBOB as having been violated in the situation you describe as long as the volume and oxygen content of the residual RFG from the prior batch have been accounted for by: 1) determining the volume of the portion of RFG left in the tank prior to blending with additional RBOB and oxygenate (the oxygen content of the residual amount will have been determined previously); 2) sampling and testing the entire tank subsequent to blending the additional RBOB and oxygenate to determine

its volume and oxygen content; and 3) mathematically subtracting the volume and oxygen content of the residual from those of the entire tank to determine the new batch volume and oxygen content.

2. **Question:** Must a terminal be registered as an oxygenate blender to add oxygenate to certified RFG designated as OPRG in order to achieve the 2.7 weight % oxygen level required by some cities during the winter months?

Answer: Under §§ 80.78(a)(6) and 80.69(f), a downstream party may add additional oxygenate to certified OPRG RFG in order to meet the requirements of a state implemented oxygenated gasoline program, i.e., the product must be sold within an oxygenated gasoline fuels program area during the control period required by the applicable state regulation. Adding oxygenate to the OPRG would make the terminal an oxygenate blender under § 80.2(mm). Section 80.76(a) requires registration with EPA by any oxygenate blender who produces any reformulated gasoline. If a party purchases finished and certified OPRG RFG to which it adds oxygenate for the purpose of meeting a state implemented oxygenated gasoline program, it would not be required to register based on that activity alone, as EPA would not consider that "producing reformulated gasoline" under these limited circumstances.

REGISTRATION/RECORDKEEPING/REPORTING

1. **Question:** The territories and protectorates that are included in the CAA definition of "State" are not per se included in the PADD definition. What are the PADD designations for the Virgin Islands, Puerto Rico, Guam, American Samoa and the Northern Mariana Islands?

Answer: The Virgin Islands and Puerto Rico are in PADD 6; Guam, American Samoa and the Northern Mariana Islands are in PADD 7.

PRODUCT TRANSFER DOCUMENTATION

1. **Question:** Section 80.77(d) requires the PTD to provide "the location of the gasoline at the time of the transfer." In a situation where the transferor is a truck carrier, what does the term "location" refer to?

Answer: For the PTD transferred from the terminal to the truck carrier, "the location of the gasoline at the time of the transfer" would be the terminal. For the PTD transferred from the truck carrier to the next party in the distribution chain, the location would be the retail outlet or other location where the gasoline is off-loaded from the truck.

2. **Question:** In certain scenarios, codes are used to represent the transferees name and address on the PTD's. For example, when a customer purchases a load of gasoline from a terminal, a

common carrier picks up the gasoline at the rack if the customer does not maintain his own fleet of trucks. The computer prepared BOL has all of the required PTD information on it except for the carriers name and address (a code is used to identify the carrier). Can we continue to use codes on the PTD to identify the transferee, in these cases?

Answer: Since the carrier would be the transferee in such a situation, the carrier's name and address would be required to be included in the PTD information. However, EPA has previously stated that the address of the transferor and transferee does not need to be included in the documentation at the time of transfer, and will extend this allowance to the use of codes in place of the names provided:

- 1) The normal business practice of the parties is to list only the codes of the transferor and/or the transferee;
- 2) Both the transferor and the transferee know and have records of the required names and addresses; and
- 3) The information is provided to EPA upon request.

3. **Question:** Would the following scenario require product transfer documents?

At the end of a month of gasoline transactions, the following shortages apply:

Company A owes 10,000 barrels of product to company B
Company B owes 10,000 barrels of product to company C
Company C owes 10,000 barrels of product to company A

Instead of physically shipping any fuel the companies just correct their books to show everything is even.

Answer: EPA would not consider this a transfer of either custody or title since no actual gasoline is represented by these "book transfers"; however, PTD's must be provided where there is a transfer of title or custody of any volume of actual product (RFG, RBOB or conventional gasoline).

ANTI-DUMPING REQUIREMENTS

1. **Question:** Is compliance with the optional complex model standards or the complex model standards measured against a refiner's 1990 baseline, or the refiner's compliance baseline?

Answer: Under § 80.101(b)(1), compliance with the anti-dumping simple model standards is measured in relation to a refiner's or importer's compliance baseline, which is

calculated using the methodology specified at § 80.101(f). Under §§ 80.101(b)(2) and (3), however, compliance with the optional complex model and complex model is measured in relation to a refiner's or importer's 1990 baseline. This would imply that a refiner's or importer's compliance baseline is not used in conjunction with the optional complex model or the complex model. EPA intended, however, that the compliance baseline would be used to measure compliance with the optional complex model and the complex model. The rationale that gave rise to the compliance baseline that is included in the preamble to the [fill in the correct proposal] is equally appropriate to the simple model, the optional complex model, and the complex model.

EPA intends to correct the language in §§ 80.101(b)(2) and (3) to specifically require use of the compliance baseline in a rulemaking in the near future.

2. **Question:** What is the aggregated baseline when refineries with individual baseline volumes and properties are aggregated with refineries that have the statutory baseline and no 1990 volume, such as terminals?

Answer: When a refiner aggregates refineries that have individual 1990 baselines with refineries that do not have 1990 individual baselines, the aggregate baseline volume is the 1990 volume of the refineries which have individual 1990 baselines, and the aggregate baseline properties is the volume weighted properties of the refineries which have individual 1990 baselines. This method of calculating the aggregate baseline volume and properties is appropriate because refineries without individual baselines are assigned the statutory baseline, and under § 80.101(f) any volume for a refinery (or aggregation of refineries) in excess of the 1990 volume is measured against the statutory baseline properties. Therefore, a refiner is able to measure compliance with the anti-dumping standards using 1990 individual baselines only up to the 1990 baseline volume regardless of how the refiner calculates the aggregation of the baselines for refineries without 1990 individual baselines.

3. **Question:** When using the compliance baseline calculation at § 80.101(f)(4)(ii) for the 1995 anti-dumping averaging period, should volumes of RFG produced during 1994 and 1995 be included in the V_a term, or only RFG produced during 1995?

Answer: Only RFG, conventional gasoline, and California gasoline produced during the 1995 anti-dumping averaging period (January 1, 1995 through December 31, 1995) should be included in the compliance baseline calculation for 1995. Therefore, any gasoline produced before January 1, 1995 should be excluded from the 1995 compliance baseline calculation under § 80.101(f)(4)(ii).

REMEDIAL ACTION

[NOTE: The following is an update of the answer to Question 1, Section VII.E., of the July 1, 1994 Question and Answer document dealing with remedial actions, to expand the remedial action option where RFG has insufficient oxygen.]

VII.E.1. Question: If reformulated gasoline is found downstream of the refinery to be off specification, what procedures are appropriate for handling this gasoline?

Answer:

Downgrading

In a case where RFG is found to violate any downstream standard, a party may take remedial action for the violation by reclassifying the RFG as conventional gasoline (by "downgrading" the gasoline), and using the gasoline only outside any RFG covered area. The downgraded gasoline must be segregated from all RFG, and the product transfer documents must identify the gasoline as conventional gasoline. There is no requirement that such downgraded gasoline must be included in any downstream party's anti-dumping compliance calculations, however.

If RFG that is designated as VOC-controlled is found to violate a standard that applies only to VOC-controlled RFG, the RFG may be downgraded to non-VOC controlled RFG, and used outside the VOC control period.¹ The VOC control period is May 1 through September 15 at facilities upstream of the retail level, and June 1 through September 15 at the retail level.

If RFG that is designated as VOC-controlled for VOC Control Region 1 is found to be off-spec for that Region, but to meet the standards applicable to VOC Control Region 2, the gasoline may be downgraded to VOC Control Region 2 RFG, and used only in that Region.

If the off-spec gasoline is found at a retail outlet or wholesale purchaser-consumer facility located in an RFG covered area, all sales of gasoline from the tank must be stopped, and the gasoline removed from the storage tank and transported to an area that is appropriate for the downgraded classification of the gasoline.

When RFG is downgraded, the party should document the circumstances that gave rise to the downgrading. The gasoline in question should be segregated from gasoline having the higher classification, the product transfer documents for the gasoline in question should be changed to the downgraded classification, and the gasoline must not be sold, dispensed, or transported in a manner that is inconsistent with the downgraded classification.

¹ The standards that apply only to VOC-controlled RFG are: RVP under the simple model; VOC emissions performance under the Phase I complex model; and VOC emissions performance and a separate NOx emissions performance standard under the Phase II complex model.

Storage

If during the VOC control period RFG is discovered that does not meet applicable VOC control standards, remedial action for the violation may consist of storing the gasoline in place until the end of the VOC control season on September 16. In such a case, the gasoline must be segregated from gasoline that meets the VOC control standards, documents associated with the gasoline must clearly state the gasoline is not VOC-controlled, and the gasoline must be sealed to prevent its accidental use in advance of September 16.

Blending With Additional RFG

Parties may blend additional RFG with RFG that is discovered to be off-spec a means of remedial action for the violation, subject to certain constraints,² to bring the mixture within all applicable standards. In such a case, subsequent to blending the RFG must be sampled and tested to meet all applicable RFG downstream standards.

Blending With Oxygenate

Section 80.78(a)(6) prohibits the blending of any oxygenate with RFG, except that oxygenate may be blended with RFG that is designated as OPRG provided the RFG is used in an oxygenated fuels program area during the oxygenated fuels control period. As a result, any oxygenate may be blended with RFG provided the RFG is designated as OPRG and is used in an oxy fuels program as specified in § 80.78(a)(6). In addition, only in the case of remediation for RFG that violates a downstream standard and regardless of whether the RFG is designated as OPRG or not-OPRG or whether the RFG is used in an oxy fuels program, oxygenate may be blended with off-spec RFG. Whenever oxygenate blending is used as a remedial action, subsequent to blending the RFG must be sampled and tested to meet all applicable RFG downstream standards and requirements, including in the case of VOC-controlled RFG the RVP or VOC emissions reduction standards and the prohibition against mixing ethanol and other oxygenates, and the maximum oxygen content standards. Moreover, any mixture of oxygenates in the resulting blend must conform to an approved oxygenate blend. Allowable oxygenate mixtures are discussed in the Oxy Fuel Section of this document.

The party performing remedial oxygen blending does not need to be registered as an oxygenate blender.

² The constraints on fungible mixing are discussed in the Transition Issues Section, Question 4, and preclude: the mixing of ethanol-based VOC-controlled RFG with non-ethanol-based VOC-controlled RFG during the period January 1 through September 15 of each year; the mixing of RFG designated as OPRG with RFG that is not designated as OPRG; and the mixing of simple model and complex model RFG.

Each of the remedial actions discussed in this answer would be appropriate at all stages in the gasoline distribution system, including pipelines and terminals, and retail outlets and wholesale purchaser-consumer facilities. These remedial actions also would be appropriate for use by refiners and importers who discover that RFG is off-spec subsequent to the gasoline being shipped from the refinery or import facility.

On any occasion when a party takes remedial actions for an RFG violation, using any of the mechanisms discussed in this answer, the party should retain documents that reflect: the reason the party believed the gasoline to be in violation (e.g., test results); the actions taken to correct the violation; and any actions taken to prevent future violations.

TEST TOLERANCES

1. **Question:** Exactly where will EPA define downstream and upstream in regards to applying enforcement test tolerances at refineries, including terminals registered as refineries? For example, does the enforcement test tolerance apply to RFG after it has been produced and certified at a refinery and transferred from the blending tank to other tankage at that refinery?

Answer: The enforcement test tolerances (which are relevant only to the "downstream standards" which are oxygen, benzene, and RVP) would apply to samples of RFG collected subsequent to movement of the RFG from the tank in which the certification sampling is conducted, even when these subsequent samples are collected within the refinery or import facility where the gasoline is produced or imported. Thus, a refiner or importer may conduct a quality assurance program of the RFG located at the refinery or import facility that previously has been certified, and use the "downstream" enforcement test tolerances when evaluating the quality assurance samples.

2. **Question:** In the Preamble to the RFG Final Rule, EPA included an initial enforcement test tolerance for benzene of 0.21 vol%, and described a round robin testing process that would result in a final benzene test tolerance that would be effective beginning January 1, 1996. Is the round robin process proceeding on time, so the final benzene test tolerance will be in place by January 1, 1996?

Answer: The benzene test tolerance round robin program that is described in the Preamble to the RFG Final Rule has not proceeded according to the schedule described there. See, 59 FR 7764 (February 16, 1994). The difficulty has been in identifying the precise nature of the benzene test under the Final Rule. Section 80.46(e) specifies that the benzene test method is ASTM method D-3606-92, but this section also states that "[i]nstrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D-3603-92 when present." The best set of modifications currently known to EPA were recently announced. See, Test Methods Question 1 from the November 21, 1994 Question and Answer Document. EPA

now believes the benzene round robin process may begin in the near future, because the benzene test method issue has been resolved. Nevertheless, it will not be possible to conclude the benzene round robin process within the time discussed in the Preamble to the RFG Final Rule.

Therefore, EPA has decided to extend applicability of the initial benzene enforcement test tolerance (0.21 vol%) beyond January, 1996, until six months after the date upon which EPA announces a new test tolerance to be based upon the outcome of the pending EPA/API round robin test program.

TRANSITION ISSUES

1. **Question:** Consider a gasoline retailer or wholesale purchaser-consumer in an RFG covered area who received a delivery of gasoline before December 1, 1994 (which would be conventional gasoline), and due to the normal pattern of gasoline use could not receive another delivery of gasoline until after January 1, 1995. The gasoline in this party's storage tank would be conventional until the storage tank could be turned-over from gasoline deliveries of RFG that occur subsequent to January 1, 1995. An example of a party in this situation is a marina that fills its gasoline tank in the Fall and then closes until the Spring. Will EPA enforce the RFG requirement at a facility such as this beginning January 1, 1995? Does EPA expect a facility such as this to pump out its storage tanks before January 1, 1995 and replace the conventional gasoline with RFG?

Answer: Under §§ 80.65(a) and 80.78(a)(1) retailers and wholesale purchaser-consumers located within an RFG covered area are prohibited from selling, dispensing, or storing gasoline that is not RFG beginning January 1, 1995. As a result, all retail outlets and wholesale purchaser-consumer facilities, including marina retail outlets, are required to have only RFG in their storage tanks beginning January 1, 1995.

Nevertheless, as part of any enforcement action for violation of the RFG requirements EPA will consider the normal patterns of gasoline deliveries to a retail outlet or wholesale purchaser-consumer. EPA will allow a retail outlet or wholesale purchaser-consumer facility to transition from conventional gasoline to RFG subsequent to January 1, 1995 without having to pump-out the storage tank (other than through normal gasoline usage) provided the party is able to demonstrate that the following conditions are met:

1. No deliveries of conventional gasoline were made to the facility after November 30, 1994.
2. The party could not have turned over the gasoline in a storage tank from conventional to RFG through deliveries of RFG prior to January 1, 1995 without pumping out the conventional gasoline in the tank. This condition would be met, for example, in the case of a party (such as the marina described in the question) who required a

delivery of gasoline before December 1, 1994 and could not accept another delivery until after January 1, 1995.

3. The party received delivery of the largest possible volume of RFG into the storage tank in question as soon as was possible. Thus, a wholesale purchaser-consumer or retailer who received a large delivery of conventional gasoline before December 1, 1994 should order the largest volume of RFG possible before January 1, 1995, and should continue to transition the storage tank to RFG as quickly as possible subsequent to January 1, 1995.
4. The pattern of gasoline deliveries into the storage tank in question is consistent with the historical pattern of gasoline deliveries into that tank, and was not the result of a decision to maximize the volume of conventional gasoline purchased in order to minimize the volume of RFG purchased.

IMPORTER ISSUES

1. **Question:** May an importer classify imported product as GTAB when that product meets all the EPA requirements for RFG or conventional gasoline, and take advantage of any specification "slack" in imported gasoline through component blending under the GTAB guidance?

Answer: An imported product that meets the definition of gasoline may be classified as GTAB by the importer if the conditions specified in the August 29, 1994 Question and Answer document are satisfied, regardless of whether the gasoline meets the commercial or regulatory standards for RFG or conventional gasoline when imported. As a result, imported product that meets the definition of gasoline (i.e., meets commercial specifications for octane, etc.) and meets all importer RFG or anti-dumping standards, may be classified as GTAB and blended with blendstocks by the importer provided the importer meets all the GTAB conditions. For example, in a case where the product produced using GTAB is RFG, and where the benzene content of the imported product is less than 1.00 vol% and the importer in question is meeting the benzene standard on a per-gallon basis, additional benzene may be blended with the imported product up to the 1.00 vol% per gallon benzene standard for RFG.

2. **Question:** EPA has stated that RFG imports must be tested and certified before off-loading a marine vessel. Must this certification occur while the vessel is docked, or may it occur while the vessel is at anchor? If a vessel is certified while at anchor, may the gasoline be transported to shore tanks using smaller vessels ("lightering"), with product transfer documents to document the transfers?

Answer: Imported gasoline normally must be certified while the gasoline is on board the marine vessel used to transport the gasoline to the United States, and the certification sampling must be performed subsequent to the vessel's arrival in the port where the gasoline will

be off-loaded. This sampling may not be performed while the vessel is at the foreign loading port or at sea. Thus, certification sampling could be performed while the vessel is at anchor in the U.S. port of entry and before the vessel actually docks at the import terminal. In the case of harbors that may have more than one port designation for U.S. Customs purposes (e.g., the New York harbor area), only a single certification is necessary even if the gasoline is off-loaded at terminals located in more than one U.S. Customs "port" within that same harbor. If the ship sails from one U.S. port to another that is not part of the same harbor (e.g., from Baltimore to New York), separate certifications are necessary for the gasoline off-loaded in each port.

In addition, when the gasoline on a vessel has been fully certified (each vessel compartment is certified separately, or the homogeneity of the gasoline in the vessel's compartments is established and the vessel's gasoline is certified using a composite sample protocol), the gasoline may be transferred to shore tanks using smaller vessels or barges (lightered) as fully certified RFG or conventional gasoline. These lightering transfers may be to terminals located in any harbor, and are not restricted to terminals located in the harbor where the ship is anchored. For example, certified RFG could be transferred from a ship anchored in New York harbor to a lightering vessel and transported to Albany, New York or Providence, Rhode Island without separately certifying the gasoline upon arrival in Albany or Providence. In this lightering situation transfers to a lightering vessel must meet the product transfer document requirements.

[Note: The following is an update for the answer to Question 2 under Importer Issues from the August 29, 1994 and October 3, 1994 Question and Answer Documents, to clarify the treatment of tank bottoms in GTAB blending tanks and the baseline against which GTAB must be measured.]

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. The GTAB also may be discharged into a tank containing finished gasoline of the same category as the gasoline which will be produced using the GTAB (i.e., conventional gasoline or RFG, and if RFG the same category with regard to VOC control and OPRG) provided the blending process is performed in that same tank.
- 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 tank bottom-gasoline must be the same category as the gasoline which will be produced using the GTAB i.e., conventional gasoline or RFG, and if RFG the same category with regard to VOC control and OPRG. 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 finished gasoline produced using the GTAB (including the imported product and any blendstocks blended with the GTAB) must be evaluated for compliance using the baseline that applies to the company in its importer capacity, and not in its refiner capacity. In a case where the gasoline being produced using GTAB is conventional gasoline, the company should use the importer baseline that would apply in the absence of § 80.101(f)(3).
 - 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.