

G. COVERED AREAS/OPT-IN/OPT-OUT ISSUES

1. **Question:** Which cities, including opt-in areas, are covered by this regulation and will have reformulated gasoline? What are the geographical boundaries of the covered areas? How many covered areas are there?

Answer: A complete list of the covered areas current as of June 10, 1994, can be found in Attachment II to this Question and Answer document. The list includes descriptions of the covered areas. The current number of covered areas are 43 (46 if the recently opted-in Wisconsin areas are included).^(7/1/94)

2. **Question:** Section 80.70 lists for Virginia the county of Richmond as an opt-in and excludes the city of Richmond. Is this a typographical error?

Answer: Yes. The city of Richmond is considered opted-in, not the county of Richmond.^(7/1/94)

3. **Question:** Putnam and Orange Counties in New York were not included in the list of RFG covered areas in § 80.70. Was there exclusion an oversight?

Answer: Yes. A correction has been made to include Putnam and Orange Counties in the New York City reformulated gasoline covered area. These counties are part of the New York City CMSA and are thus appropriately part of the New York City ozone nonattainment area and reformulated gasoline covered area. Putnam and Orange Counties are also included in the New York City CMSA for purposes of the oxygenated fuels program requirement.^(7/1/94)

4. **Question:** Does the EPA maintain a single document listing the reclassification of CO and ozone nonattainment areas?

Answer: For information pertaining to the reclassification of CO and ozone nonattainment areas, contact Valerie Broadwell (919-541-3310) or Barry Gilbert (919-541-5238) Ozone/Carbon monoxide Programs Branch, AQMD, MD-15, OAQPS, EPA, Research Triangle Park, North Carolina, 27711.^(7/1/94)

5. **Question:** How and when will refiners and gasoline distributors be notified of new areas which opt-in to the RFG program? How much advanced notice will be provided?

Answer: New areas electing to opt-in to the reformulated gasoline program will be announced in a Federal Register notice.^(7/1/94)

6. **Question:** If a new area decides to opt-in to the reformulated gasoline program, what determines the effective date that reformulated gasoline must be supplied to that area?

Answer: The effective date of the program in any area which opts into the program is January 1, 1995, or one year after EPA receives the request to include the area in the program, whichever is later. EPA will announce the effective date of new opt-in areas in a Federal Register notice after receipt of a state's petition.^(7/1/94)

H. REGISTRATION/RECORDKEEPING/REPORTING

1. **Question:** Where should registrations and reports be sent?

Answer: U.S. Environmental Protection Agency
Attn: REFGAS (6406J)
1200 Pennsylvania Ave., NW

(7/1/94)

2. **Question:** Who is required to register for the Reformulated Gasoline and Anti-dumping Program?

Answer: Refiners and importers of conventional gasoline, reformulated gasoline or RBOB and oxygenate blenders producing reformulated gasoline by blending RBOB with oxygenates must register with EPA prior to producing or importing such products. Independent laboratories must register prior to being specified by refiners or importers on facility registrations.^(8/29/94)

3. **Question:** May a company have multiple designations? That is, may a company register as a refiner, an importer, a blender, and a marketer since aspects of our business cover all designations? Does each company have a designation, or can a company choose a designation that best fits the operations of a given facility?

Answer: As discussed above, a company is required to register as a refiner, importer, or oxygenate blender if it produces any reformulated gasoline. A company is also required to register as a refiner or importer if it produces conventional gasoline. A party whose business covers more than one of these designations must register for each designation. There is no registration requirement for a marketer (called a distributor under the RFG regulations).^(7/1/94)

4. **Question:** Is the required registration of blenders limited only to those parties who hold title to the product?

Answer: No. Any blender that fits the definition of an oxygenate blender under the regulations is subject to the requirements for oxygenate blenders, including the registration requirements at § 80.76. An oxygenate blender is defined at § 80.2(mm) as any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility. Similarly, any blender that fits the definition of a refiner is subject to the requirements for refiners, including the registration requirements at § 80.76. A refiner is defined at § 80.2(i) as any person who owns, leases, operates, controls or supervises a refinery (i.e., a plant at which gasoline is produced.) If, for a particular operation, the definition of oxygenate blender or refiner applies to more than one party, the parties may agree that one party will report. However, each party may be liable for noncompliance with applicable regulations.^(7/1/94)

5. **Question:** Will ID numbers issued for other EPA programs be used for the reformulated gasoline and anti-dumping programs?

Answer: To a certain extent, yes. If a facility was previously registered for EPA's lead phasedown program that ID will be used for the facility ID (with zeros added to pad out to the new format). If a company is registered in the fuels and fuel additives registration system (FFARS) the FFARS company ID will be used for the company ID. IDs from any other EPA programs will not be valid. EPA plans to issue a list of the phasedown and FFARS IDs.^(7/1/94)

6. **Question:** On the registration forms it seems you are forced to check only one primary activity (refiner, oxygenate blender, importer, or independent lab). Do you submit two forms if you are both a refiner and importer?

Answer: No. The final forms have been changed to register each company once for all applicable activities. As before, each facility will be registered separately for each activity that is undertaken at the facility. Import facilities need not be registered individually (see question 10 in this section).^(7/1/94)

7. **Question:** Section 80.65(f)(2)(i) & (ii) Independent analysis requirement, states that any importer shall designate one independent laboratory for each import facility at which RFG or RBOB is imported and identify the designated independent laboratory to the EPA according to the registration requirements in § 80.76. However, § 80.76(c)(3) requires separate facility registrations only for refineries and oxygenate blending facilities. How and where do importers provide the required facility information?

Answer: There are two ways that an importer may designate which independent lab(s) it will use. The first, which is reflected in § 80.76(c) of the corrections to the RFG regulations, is to complete a facility registration for each PADD into which it imports gasoline. The importer should indicate the facility name as a PADD (i.e. PADD I) and enter the PADD number as the facility ID number (i.e. 00001). The remaining information, minus the facility address would be completed as for a refinery or oxy blending facility. The second is to register import facilities separately just like a refinery or oxygenate blending facility. An importer may elect either method or use a combination of both. That is, an importer may indicate a single independent lab for its operations in a PADD but supersede that for one or more import facilities by registering each facility with a different independent lab.

Separate import facility registrations only affect independent laboratory designations, however, and such separate registrations have no affect on the requirement that an importer must include all imported gasoline, each year, in its annual compliance calculations.(7/1/94)

8. **Question:** Will an independent laboratory be issued an ID for the entire company or must it register each one of its laboratories individually?

Answer: If an independent sampling and testing firm runs many laboratories but test results will be gathered at and reported to EPA from a single location, the firm may register once at that location. If, however, reporting will be done from several locations, each one should be registered separately.(7/1/94)

9. **Question:** If an importer is unsure of what terminals might be involved in importing gasoline (RFG or conventional), may importers register more terminals than might be used?

Answer: Yes. However, an importer does not need to register each import facility it uses (see previous question).(7/1/94)

10. **Question:** The regulations require that an importer be registered 90 days before imports are received. Does this mean the company or the facility?

Answer: Both. If an importer chooses to register individual import facilities it must register them 90 days prior to shipping into them. However, an importer is only required to register its activities in each PADD (still 90 days in advance) as per § 80.76(c)(3) in the amended regulations.(7/1/94)

11. **Question:** In filing company and facility registrations, if a parent corporation has several subsidiary corporations it desires to register and report to EPA under one company ID number, would it be permissible to register all of the facilities operated by the subsidiaries under only one of the corporations even though for legal and tax purposes they are regarded as separate entities under the umbrella of the one parent corporation? Would it be necessary to obtain a registration number for the parent corporation or could one of the subsidiary corporations take responsibility for compliance for all of the facilities?

Answer: In this situation the parent corporation should register for a company ID # and facilities operated by the subsidiary corporations should be registered as separate facilities but under the parent corporation's company ID #.(8/29/94)

12. **Question:** Will common carriers be required to register their transport trucks as oxygenate blending

facilities?

Answer: Normally, only the owner of the gasoline produced at an oxygenate blending operation must register as an oxygenate blender. If a common carrier blends gas in trucks that it owns it must meet all of the requirements for other oxygenate blenders. *But see answer to Question 1 of the "General Requirements" section of this document.*

If an oxygenate blender uses common carriers or its own trucks for splash blending it may register the entire fleet for any single covered areas as a facility and indicate the office where the truck blending operations are coordinated as the blending facility. The office so registered must be at the lowest level at which coordination occurs and geographically closest to each designated RFG area.^(8/29/94)

13. **Question:** Does a company that produces RFG have to register all oxygenate blending facilities or just those that produce RFG? All import locations or just those that import RFG?

Answer: Registration is required only for oxygenate blending facilities at which RFG is produced, and not for oxygenate blending facilities where oxygenate is blended with conventional gasoline only. If an oxygenate blender decides to blend RBOB with oxygenates to produce RFG at a facility that has not previously been registered, the facility must be registered three months prior to blending.^(10/17/94)

14. **Question:** In a situation where an importer leases tankage from another company, e.g., from a for-hire terminal, who must register such import facility, the company that owns the terminal, the importer that leases the tankage, or both?

Answer: Under § 80.2(r), an importer is defined as "a person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States...." Accordingly, it is the importer of the gasoline, and not the owner of the terminal from whom the importer leases tankage, who must register under § 80.76.^(10/17/94)

15. **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.^(12/5/94)

16. **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.^(1/30/95)

17. **Question:** What is EPA's intent on requiring the location of off-site records on the facility registration?

Answer: EPA needs to know where records are stored so that EPA inspectors may inspect those records. If a facility keeps some or all of its records off-site EPA needs to know the address of the primary off-site storage facility.^(7/1/94)

18. **Question:** Will EPA allow the electronic storage of records?

Answer: Yes, so long as reasonable access and audit controls are in place.

19. **Question:** According to the RFG and anti-dumping provisions, a regulated party must keep records for as long as 5 years. Can the original documents, such as bill of lading, be transferred by a regulated party to micro fiche and allow the original records to be destroyed?

Answer: The regulations do not specify in what form records must be kept. A method of storage which faithfully reproduces records, like micro fiche recording, would be acceptable so long as means of referencing the information are kept on hand and operational for the entire five year retention period.(8/29/94)

20. **Question:** Has EPA issued guidelines for security and audit procedures for electronic recordkeeping systems?

Answer: No. The Agency does not plan to issue such guidelines. EPA recommends that recordkeeping systems be audited by an independent auditing firm to verify the efficacy of security and audit controls.(7/1/94)

21. **Question:** May records, regardless of whether they are paper or electronic, be stored off-site?

Answer: Yes. Refiners, oxygenate blenders and importers must indicate where records will be kept on all facility registrations.(7/1/94)

22. **Question:** Do the recordkeeping and reporting requirements for conventional gasoline under the anti-dumping provisions apply to gasoline produced in 1994?

Answer: No.(7/1/94)

23. **Question:** With regard to the record keeping requirement for test results, please clarify the document which must be kept.

Answer: Section 80.74(a)(2)(iii) requires any regulated party who samples and tests reformulated gasoline or RBOB to maintain records containing the results of the tests. The headnotes of § 80.74 specifies that the record keeping period is five years from the date a record is created. EPA believes this regulation requires that all documents that contain the results of RFG testing must be kept for five years. EPA would consider this requirement to have been met, however, where the original test result is kept, plus any record that contains results for that test that are not identical to the original test result.

Consider, for example, an RFG sample that is analyzed for oxygen by a refiner using a testing apparatus that generates a printout of the test results. In this example the laboratory chemist transfers this oxygen test result, by hand, to a laboratory summary sheet for the sample that includes test results for other parameters. This summary sheet then is used to prepare a typed report of all test results for the sample.

EPA believes that each of the three documents described in this example is a "record containing the results of" tests on RFG, and that § 80.74(a)(2)(iii) requires that each of these documents must be kept for a period of five years. However, EPA would consider the record keeping requirement to have been met if the testing apparatus printout is kept, and, in addition, any other worksheet or report that contains results for that test that differs from the testing apparatus result. (11/12/96)

24. **Question:** Are there different reporting requirements for refiners, importers and oxygenate blenders?

Answer: Yes. See § 80.75 of the regulations.(7/1/94)

25. **Question:** If a party registers a facility as a refinery, oxygenate blending facility or import facility and then does not produce or import gasoline at that facility during an averaging period, must the party report to EPA?

Answer: Refiners, importers, and oxygenate blenders are required to report to EPA only during averaging periods when the party produces or imports some volume of gasoline, even if the party has previously registered with EPA.^(9/26/94)

26. **Question:** EPA has required that volumes be reported in gallons, but much of the industry measures volume in barrels. May volume be reported in barrels?

Answer: No. If necessary, convert the volume in barrels to gallons using the proper conversion factor (42 gals/bbl) and round the result to the nearest whole gallon. When rounding fractional values, values from 0.01 to 0.49 should be rounded down to the unit value and values from 0.50 to 0.99 should be rounded up to the next highest unit value.^(7/1/94)

27. **Question:** What are the reports required for a refiner who produces RFG under the per gallon option?

Answer: A refiner meeting the certification standards on a per gallon basis must submit quarterly reports for every batch of reformulated gasoline and RBOB produced, as specified in § 80.75(a), and the end of year statement indicated in § 80.75(l).^(7/1/94)

28. **Question:** In what form should independent laboratories report batch test results?

Answer: Independent laboratories should use the same reporting forms and EDI formats used by regulated parties for reporting on batch test results. They will not need to report designations for each batch or the results of emissions calculations.^(7/1/94)

29. **Question:** How should a party producing reformulated gasoline or RBOB make the designation of per gallon or average for the appropriate fuel parameters?

Answer: If filing by paper, the party should submit the Annual Compliance Designation with its first quarter batch reports. If filing electronically, the first batch report transmitted must include the designations which will apply to each subsequent batch for that calendar year.^(7/1/94)

30. **Question:** When you make the annual designation as an importer does it apply to all of your imported gasoline, or can you designate average or per gallon compliance parameters for each import facility?

Answer: Importers must use the same per gallon or average designations for all reformulated gasoline imported each year, regardless of where that reformulated gasoline is imported.^(7/1/94)

31. **Question:** What is the final form of the batch identification number?

Answer: A batch ID is made up of the 4 digit company ID, 5 digit facility ID, 2 digit reporting year, and the 6 digit batch number (e.g., CCCC-FFFF-YY-BBBBBB).^(7/1/94)

32. **Question:** May the six digit batch number in the batch ID contain non-numeric characters (i.e., to mark the grade of the batch)?

Answer: No.^(7/1/94)

33. **Question:** May batch numbers be used to identify petroleum products other than gasoline or gasoline blendstocks thereby causing gaps in the batch numbering sequence?

Answer: Yes.(7/1/94)

34. **Question:** Must batch numbers be assigned in both numerical and chronological order?

Answer: Batch numbers should be assigned in numerical and chronological order of production (not shipment). If a batch of gasoline must be re-blended because it is out of specification, and an independent laboratory has already sampled the batch, the resulting batch must be assigned a new ID. The volume of the original batch ID should then be reported to EPA as zero. If an independent lab has not sampled the original batch, the refiner may retain the original batch number. In either case, the refiner should ensure that records are kept on the nature of the contamination, corrective measures and original and subsequent sampling and testing.(7/1/94)

35. **Question:** If an importer registers in a PADD, may the importer use a starting point other than zero, within the range of valid batch numbers, for generating the sequential batch numbers at each of its import facilities?

Answer: Yes. As long as no batches are assigned duplicate numbers this would be acceptable.(7/1/94)

36. **Question:** A refinery places two batches of gasoline that have been sampled and certified as reformulated gasoline with the same designation into a tank. Must the refinery assign a new batch ID to the mixture or can it be identified with the two previously assigned batch IDs?

Answer: No new ID is necessary. Batches of reformulated gasoline may be fungibly mixed, subject to the segregation provisions of § 80.78.(7/1/94)

37. **Question:** Are multiple shipments from the same tank multiple batches?

Answer: If a volume of gasoline is placed in a tank, certified (if not previously certified), and is not changed in some way it is considered to be the same batch of gasoline even if several shipments are made from that tank. The volume of the batch for RFG accounting and reporting purposes is the sum of all shipments.(7/1/94)

38. **Question:** Will each compartment of a truck loaded at the rack at the refinery be deemed a different batch of reformulated gasoline and thus need a batch identification number? Could the invoice number serve as the unique identification number for that shipment?

Answer: In the case of reformulated gasoline produced by adding oxygenate to RBOB in a truck, each truck compartment is a separate batch of reformulated gasoline. If the oxygen standard is being met on average, the reformulated gasoline in each compartment must be given a different batch number. If a volume of reformulated gasoline is certified and designated as a batch and then loaded into a truck, multiple compartments could be filled with gasoline from that batch.

The invoice number may only be used for the batch number if it is six digits in length, unique for each batch produced in a year for each truck blender and generated in chronological and numerical order of production of the batch. Non-numeric characters are not allowed in the batch number.(7/1/94)

39. **Question:** Refiners and oxygenate blenders who produce averaged reformulated gasoline must report which covered areas products have been distributed to by each facility. How are these areas to be

determined?

Answer: Unless a refiner or oxygenate blender has specific and detailed information indicating otherwise, it must be assumed that products have been delivered to all covered areas serviced by the distribution system(s) used. A list of covered areas as of July 1, 1994 is attached to this document. (For a more detailed discussion of fungibility and covered areas see the responses to Survey questions in this document.)^(7/1/94)

40. **Question:** What is the definition of a responsible corporate officer (RCO) who is required to certify some of the submissions involved?

Answer: Under § 80.75(n), reports to EPA must be signed and certified as correct by the owner or a responsible corporate officer of the refiner, importer, or oxygenate blender. "Owner" means the person who is the principal owner of the business. The "responsible corporate officer" means a person who is an officer of the corporation under the laws of incorporation of the state in which the company is incorporated, and who in the corporate structure is the person ultimately responsible for the refining, importing, or oxygenate blending activity. EPA will accept reports that are signed by someone to whom the responsibility is delegated by the owner or an officer of the corporation, provided that the delegation is made in writing, the delegatee is familiar with the RFG and anti-dumping requirements, and the delegatee is no lower in the organization than refinery manager in the case of refiners, manager of the oxygenate blending facility in the case of oxygenate blenders, vice-president in charge of importing activities in the case of importers, or a similar level position.^(7/1/94)

41. **Question:** Should batch reports for blended gasoline be submitted by the facility at which gasoline is blended or the facility from which the blended gasoline is shipped?

Answer: The facility where blending occurs.^(7/1/94)

42. **Question:** When are NOx Emissions Performance Averaging Reports due?

Answer: With the fourth quarter submissions.^(7/1/94)

43. **Question:** How will EDI agreements affect third parties?

Answer: An EDI agreement will be binding only on the Agency and the cosigner of the agreement.^(7/1/94)

44. **Question:** The draft version (4/12/94) of the Batch Report for the Reformulated Gasoline and Anti-Dumping Program calls for reporting the oxygen content in weight (mass) percent and oxygenates by volume percent. Both the Simple and Complex models require oxygenate input as percent weight oxygen for compliance calculations. What value does EPA place on reporting oxygenates as volume percent?

Answer: The regulations require that oxygenate content (not oxygen content) of each oxygenate be measured and reported for each batch of gasoline (see §80.65(e)). The oxygenate content measured by a refiner or importer must match that measured by an independent laboratory within a certain volume percent range as per §80.65(e)(2)(i). Since the units specified by §80.65(e)(2)(i) are volume percent there is no choice but to report oxygenate content in those units.^(8/29/94)

45. **Question:** Will the EPA accept a mathematical conversion of the oxygen content (weight percent) for each oxygenate to a volume percentage of oxygenate for reporting purposes? Alternately, does EPA expect each refiner or importer to report volume percent as determined by laboratory GC analysis? Close agreement between the two alternatives would clearly be expected; however, minor differences might

exist due to conversion factors, etc. Please clarify.

Answer: EPA will accept mathematical conversions from weight percent oxygen from an oxygenate to volume percent oxygenate using the following formula. Refiners, importers and oxygenate blenders must use the method described in §80.46(g) (GC-OFID) to determine the weight percent oxygen from each oxygenate.

$$V_o = \frac{141.5 * W_o}{\rho_o * O_o * (^API + 131.5)}$$

Where: V_o = volume percent oxygenate
 W_o = weight percent oxygen in blend from oxygenate
 ρ_o = density of oxygenate (g/ml)
 O_o = molar weight fraction oxygen in oxygenate

The following densities and weight fractions of oxygen should be used for these calculations:

Oxygenate	Density at 60 °F (gm/ml)	Weight fraction oxygen
ethanol	0.7939	0.3473
ethyl t-butyl ether (ETBE)	0.7452	0.1566
ethyl t-amyl ether (ETAE)	0.7657*	0.1376
methanol	0.7963	0.4993
methyl t-butyl ether (MTBE)	0.7460	0.1815
t-amyl methyl ether (TAME)	0.7752	0.1566
diisopropyl ether (DIPE)	0.7300	0.1566
t-butyl alcohol	0.7922	0.2158
n-propanol	0.8080	0.2662

* This density is at 20 °C.

(9/26/94)

46. **Question:** We assume that a terminal operator who stores gasoline for a terminalling customer is responsible for receiving transfer documentation on RFG and conventional gas moved into the terminal for the customer. The terminal then records and stores copies of the transfer documents, produces a new transfer document at the time of the transfer out of the terminal, and passes this document back to the customer after the move out.

The transfer documents for RFG require only minimum/maximum standards for benzene, oxygen, RVP, etc., rather than actual measurement of these specifications. Since the regulations require refiners and importers to report actual measurement of specs, we are assuming that a terminal does not have to

report to the EPA the information on the transfer documents. Is this a correct assumption?

Answer: Yes.(9/12/94)

47. **Question:** By our reading of the regulations, the only reporting required of the oxygenate blender who elects to comply with the oxygen standard on a per gallon basis is a yearly report due the last day of February of each year (beginning in 1996) that states the total volume of RFG produced along with the certification statement. Is our interpretation correct? Are we correct in assuming that batch numbers and individual batch data are not required as part of the report?

Answer: Your interpretation is correct.(10/31/94)

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

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

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

In the case of an in-line blended batch, the batch should be included in the averaging period which encompasses the date and time of the ending point for the batch, because the certification sample will not be fully collected until that point.(11/28/94)

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

Answer: Question 14 relates to in-line blending operations that have petitioned EPA for and received an exemption from the independent sampling and testing requirements of the RFG regulations. In such petitions, refiners often define a "batch" of in-line blended gasoline as the volume of gasoline blended by the operation through the blender. The gasoline is then certified by the refiner based on the

volume that has been sampled by an automated compositor for testing. Once it is certified, this product can then be pumped directly into a pipeline or into a tank for storage. At this point, it is fungible with other similar product. Accordingly, the batch volume that the refinery accounts for under the recordkeeping requirements and for purposes of averaging is the volume of product that is certified before the product goes into the pipeline or is stored in a storage tank where it may be fungibly mixed.^(11/28/94)

50. **Question:** Should actual measured values be used for compliance calculations even when they are below those negligible limit values used in the baseline? For example, if a sulfur content of 10 ppm is measured in a batch of finished gasoline, should 10 ppm be used for compliance calculations instead of 30 ppm?

Answer: The measured values must be reported on the batch reports and used for compliance calculations. ^(4/18/95)

51. **Question:** When reporting compliance parameters to EPA on the batch reports we are asked to report to a greater degree of precision than the regulations indicate for the standard. An example would be that the per-gallon oxygen content standard is supposed to be 2.0 weight percent. The EPA form asks for two places to the right of the decimal. Would we still be in compliance for the oxygen content if the reported value was 1.95 weight percent?

Answer: You would be in compliance for the example described above. In order to determine compliance EPA will round all values to the appropriate decimal place for the applicable standard. If the digit immediately to the right of the last appropriate decimal place for the standard is 5 to 9 the digit at that decimal place will be rounded up (1.95 will be rounded to 2.0.) If the digit immediately to the right of the appropriate decimal place for the standard is 0 to 4 the value should be truncated (rounded down) at the appropriate decimal place (1.94 will be rounded to 1.9.). ^(5/9/95)

52. **Question:** The batch report requires reporting the volume percent for six oxygenates -- methanol, MTBE, ethanol, ETBE, TAME and t-butanol. If a refiner or oxygenate blender uses MTBE or ethanol as an oxygenate, and does not include in its calculation of oxygen weight percent any other oxygenates that may be present in the MTBE or ethanol, is it necessary to include the volume percent of those other oxygenates on the batch report form?

Answer: Trace amounts of oxygenates that may be present in MTBE or ethanol do not have to be reported. However, where a refiner reports total oxygen weight percent that includes MTBE or ethanol plus other oxygenates in larger than trace amounts, the volume percent of each of the other oxygenate should be included on the batch report. ^(8/15/95)

53. **Question:** What will constitute a valid electronic signature for electronic submission of reports to EPA?

Answer: EPA will require that each party who wants to report electronically must sign an agreement that the use of electronic reporting methods will be considered equivalent to paper methods and that personal identification numbers assigned by EPA will be recognized as constituting a valid signature. In addition, each transmission sent to EPA must have embedded in it two personal identification numbers (PINs), one assigned to the company and one assigned to the individual certifying the report.^(7/1/94)

54. **Question:** Please clarify what the transaction set control number and report number on the batch report and other EDI maps are. Please detail their specific uses, especially with respect to resubmission of reports. Are these numbers unique on a company or facility basis?

Answer: The transaction set control number (ST02) is a serial or sequential number representing the transmission sequence to EPA. The report number (BTR05) is the sender's own tracking system number which refers the sender back to his own original record.

A previous BTR05 should be inserted to BTR06 when the report is a resubmission; i.e., when BTR01 = 15.

These numbers need not be unique on a company or facility basis. (8/15/95)

55. **Question:** On the batch report map, there is an extra asterisk on the end of line 140 of table 1. Is this a mistake?

Answer: The extra asterisk on the end of line 140 has been corrected in the revised edition of the report. (8/15/95)

56. **Question:** Regarding EDI transmission, a one day response as functional acknowledgment is preferable to five day response time. Why can't EPA commit to provide a one day response?

Answer: EPA will endeavor to provide functional acknowledgments as soon as possible, but no later than five days from receipt of an EDI transmission. The five day time frame was intended to reflect a "worst case" scenario given current resource and other constraints. However, we are still in the first year, "pilot" stage of accepting RFG and anti-dumping reports via EDI and will consider shortening the functional acknowledgment time frame to one day or some other reasonable time period. (3/19/96)

57. **Question:** If we send a report via EDI prior to the reporting deadline, the reporting deadline passes, and then (i.e. after the deadline has passed, but still within the five days EPA has allowed for its functional acknowledgment) EPA sends a functional acknowledgment, can we still be fined if there is something wrong with the file?

Answer: Nothing in the Terms & Conditions Memorandum relieves a party of the requirement to submit timely RFG and anti-dumping reports. However, the reporting party has agreed to maintain records and archives of reports sent via EDI and to resend the transmission within five days if so requested by EPA. Although this does not relieve any reporting party of the requirement to submit a timely report, it acknowledges that a timely report submitted in good faith via EDI may nevertheless have become unintentionally garbled in its transmission and allows the reporting party a reasonable amount of time to send a proper transmission. (3/19/96)

58. **Question:** If re-transmission is necessary due to fault on EPA's part, why won't EPA pay for re-transmission?

Answer: EPA will take all reasonable steps to properly maintain equipment, services, and testing necessary to effectively and reliably send and receive documents via EDI. Although EPA is unable to pay for re-transmission costs, we will exercise the highest degree of care to minimize any error at our end. (3/19/96)

59. **Question:** Further clarification is needed in the Terms & Conditions Memorandum regarding the 'receipt computer.' Specifically, EPA should specify receipt date and time for documents transmitted directly and via a VAN service provider.

Answer: EPA is currently using a VAN. A document is considered received on the date and time that it becomes accessible to EPA at EPA's VAN. (If a document were transmitted directly to EPA, then

the document would be received on the date and time that it becomes accessible to EPA at EPA's receipt computer.) This clarification will be included in a future revision to the RFG and Anti-Dumping Program EDI Technical Guidelines. (3/19/96)

60. **Question:** Refiners, importers and oxygenate blenders of California gasoline that have elected to meet any benzene content, oxygen content or toxics emission reduction standard on average for reformulated gasoline produced through February 29, 1996, must submit reports demonstrating compliance for the 1995 reporting year (any reformulated gasoline produced during 1994 and from January 1, 1995 through December 31, 1995) and for the period from March 1, 1995 through February 29, 1996 (see section 80.81(b)(3)). What value should be put in the reports for the latter averaging period under "reporting year"?

Answer: The value "56" should be placed in the reporting year field for reports covering the averaging period from March 1, 1995, through February 29, 1996. (5/30/96)

I. PRODUCT TRANSFER DOCUMENTATION

1. **Question:** Where are the product transfer documents requirements found in the RFG regulations and what do they require?

Answer: The product transfer documents (PTD) requirements are found in § 80.77 of the regulations for reformulated gasoline and RBOB and in § 80.106 for conventional gasoline. These sections require that on each occasion when any person transfers title or custody of any gasoline (with the exception of gasoline sold or dispensed at a retail outlet or wholesale purchaser-consumer for use in motor vehicles), the transferor must provide to the transferee the specific information pertaining to the fuel required in the product transfer document sections.

The PTD requirements are not intended to require the creation of any new documentation in most situations. Instead, these requirements intend that parties include the PTD information in the documentation currently used to memorialize the transfer of title or custody of gasoline. (7/1/94)

2. **Question:** It is my understanding that under the RFG regulations the EPA mandates product transfer documentation for conventional gasoline starting January 1, 1995, not December 1, 1994. Is this correct.

Answer: Yes. (11/21/94)

3. **Question:** § 80.77 of the proposed rule included conventional gasoline in the requirement for product transfer documents. This section, in the final rule, now excludes conventional gasoline and includes that product in § 80.106. This latter section however, states that it applies only "to product that becomes gasoline upon the addition of oxygenate only." Is it correct to interpret that, except for gasoline that has had an oxygenate added, conventional gasoline transfers do not require PTD's to be in compliance?

Answer: No. All conventional gasoline, including blendstock that requires the addition of oxygenate only, must meet the product transfer document requirements in § 80.106. (7/1/94)

4. **Question:** Unlike the PTD requirements for RFG and RBOB contained in § 80.77, the PTD requirements for conventional gasoline contained in § 80.106 do not indicate that PTD's are not required when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility. Does this mean that retail stations that provide conventional gasoline must provide PTD's to their customers?

Answer: PTD's are not required when conventional gasoline is sold or dispensed for use in

motor vehicles at a retail outlet or wholesale purchaser-consumer facility. EPA intends to amend the regulations to reflect this.^(10/17/94)

5. 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.^(12/5/94)

6. Question: Are distributors who deliver conventional gasoline to retailers and wholesale purchaser-consumers in non-RFG areas required to fulfill the PTD requirements, including the statement in § 80.106(a)(1)(vii)? Do retailers and wholesale purchaser-consumers in non-RFG areas have to retain records?

Answer: The PTD requirements of § 80.106 apply to all distributors of conventional gasoline. However, because the PTD requirements are of little value concerning the delivery of conventional gasoline to a retailer or wholesale purchaser-consumer (or smaller purchaser with a tank of less than 500 gallons) in a non-RFG area, EPA will not require compliance with the PTD requirements in this limited situation. The PTD requirements of § 80.106, however, must be met for all other transfers of conventional gasoline. Note that the PTD requirements of § 80.77 for RFG and RBOB apply to all transfers of RFG and RBOB (other than when the gasoline is sold or dispensed by a retail outlet or wholesale purchaser-consumer facility for use in motor vehicles), including transfers in which RFG or RBOB is delivered to a customer's storage tank, regardless of the size of the tank.

The anti-dumping regulations do not impose recordkeeping requirements for conventional gasoline on parties downstream of the refiner or importer. See § 80.104. All parties in the distribution network must maintain records for RFG and RBOB in accordance with § 80.74, however. ^(2/21/95)

7. Question: The regulations state that, "other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility," transfer documents must be exchanged with the requisite information. In many areas of the country, the petroleum industry is using cardlocks, unmanned fueling facilities, to dispense gasoline into motor vehicles. These cardlocks provide access to fleet operators via an electronic card, which is also used to access the pumps. The pumps transmit an electronic message regarding the purchase and the customer is invoiced. There is no opportunity for the delivery of written paper at the time of purchase. In EPA's judgment, are these cardlock facilities considered retail outlets?

Answer: As you describe them, these cardlock facilities would be considered retail outlets for purposes of the product transfer document requirements.^(10/31/94)

8. **Question:** Outstanding gasoline exchange balances are commonly closed out between trading partners on an accounting basis because they are too small for an economic physical shipment. These "book transfers" do not in themselves cause the transportation or storage of product. Is it correct to assume that these activities are not subject to a requirement for PTD's?

Answer: The PTD requirements refer only to the transferring of custody or title of any reformulated gasoline, RBOB, or conventional gasoline. If these "book transfers" involve the transferring of custody or title of such fuels then the PTD requirements would be applicable. The PTD information could be included on whatever documents are currently being used to memorialize these transactions for business reasons.(7/1/94)

9. **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).(12/5/94)

10. **Question:** If the oxygenate program remains in effect in California after CARB fuel in 1996, would we still need to identify the type and amount of oxygenate to meet the oxygenated program transfer document requirements? or will we be exempt for these record keeping/transfer document requirements?

Answer: With regard to RFG product transfer documentation requirements as applied to California gasoline, § 80.81(c)(9) of the regulations exempts California gasoline (as defined in § 80.81(a)(2)) produced or imported subsequent to March 1, 1996 from the product transfer documentation requirements contained in § 80.77 of the regulations. The wintertime oxygenated program transfer documents are a state of California requirement, EPA exempts California gasoline from the federal RFG PTD requirements but not from state required documents.(7/1/94)

11. **Question:** On the island of Puerto Rico there is no opportunity for transporting a conventional gasoline to an area requiring reformulated gasoline except by ship or barge. Can the PTD and record keeping requirements downstream of the refiners and importers be eliminated in this instance?

Answer: No. All PTD and record keeping requirements apply to the Island of Puerto Rico. The most appropriate way to comply with the PTD requirements is to include the information required by § 80.77 and § 80.106 on documents that are currently being used to memorialize these transactions.(7/1/94)

12. **Question:** EPA has stated that the transferor "must provide to the transferee... product transfer documents." On an import the transferor is a foreign entity presumably not subject to our laws. How do we ensure that the foreign refiner provides all information? As importers are we to generate it ourselves?

Answer: Foreign refiner are not subject to the PTD requirements, unless they are also importers. Importers are required to provide PTD information to all parties to whom they transfer title or custody of RFG, RBOB or Conventional gasoline.(8/29/94)

13. **Question:** Will the EPA provide gasoline transfer document forms?

Answer: No. (7/1/94)

14. **Question:** Is there a required format for the wording of the certification for RFG? If not, is there a recommended or suggested format for certification in the PTD's, for downstream parties?

Answer: No, to both questions. Section 80.106(a)(1)(vii) does specify certain language for conventional gasoline. (7/1/94)

15. **Question:** One pipeline has notified all shippers and suppliers that their metering ticket will be the official transfer document for all shipments. This appears to be appropriate for a transfer whereby the pipeline is delivering (or transferring custody to a party) but how can it be appropriate when the pipeline is receiving (or being the transferee) product from a shipper? Isn't the shipper required to provide its own document? Or can we rely on the pipeline's ticket which memorializes the transaction?

Answer: EPA does not require that there be an "official" transfer document. While the approach described in the question seems appropriate, the enforcement liability still remains with the transferor. As a result, the transferor should verify that the transferee receives all the PTD information for each batch. (8/29/94)

16. **Question:** We are a domestic refiner who also will be importing (paying customs duties) conventional and reformulated gasoline into our own marketing terminal. It is our understanding that we would be the transferor, not the foreign refiner from whom the product was obtained. If we were importing into another party's terminal, the PTD would have to show them as receiving the product (transferee).

EPA reiterated they expect that most, if not all, of the PTD information would be included on existing type documents. New documents would only be required when there is no existing paper path with the necessary EPA information to follow product movements. If the necessary PTD information is included on the foreign refiner's transfer papers, is it necessary to originate another document since we are the first U.S. party involved in the transfer.

Answer: The foreign refiner's paperwork would satisfy the PTD requirements if you provide it to the transferee and it includes all of the required PTD information, including the proper date and location of the transfer. (10/31/94)

17. **Question:** Is EPA documentation necessary to settle inventory over/short accounts where the volume of gasoline involved is de minimis? If so, what are the parties documenting?

Answer: PTD information is only required when there is a transfer of title or custody of any gasoline (with the exception of gasoline sold or dispensed at a retail outlet or wholesale purchaser-consumer for use in motor vehicles). As a result, PTD information is not required where no product custody exists, and no transfer of title occurs, provided that the volume of gasoline is de minimis in relation to the volume of gasoline involved in the parties' overall transactions. (9/26/94)

18. **Question:** Where a reformulated gasoline is injected into a "closed" proprietary pipeline, shipped to a "closed" proprietary marketing terminal and loaded into a proprietary truck and no other refiner can physically deliver or receive at these points, is it required to provide PTD's at each of these transfer points?

Answer: The regulations require PTD's on each occasion when any person transfers custody or title of RFG, RBOB or conventional gasoline and conventional gasoline blendstock requiring the addition

of oxygenate only. When the custody of gasoline changes within a proprietary distribution system the documents that are currently being used to memorialize the gasoline movement should contain the information specified for PTD's.(7/1/94)

19. **Question:** § 80.77 and § 80.106 states that product transfer documentation must be provided on each occasion when any person transfers custody or title of reformulated gasoline, RBOB or conventional gasoline. It is a common practice for a party to purchase or take title to gasoline but not take physical custody of the product. As an example, a party may buy product (and take title) in a tank and then take physical custody at a later time. Does EPA require that PTD's be provided when title changes or when the receiving party takes physical custody? What if separate parties are taking receipt of the title and the custody?

Answer: The regulations require PTD's on each occasion when any person transfers custody or title of RFG, RBOB or conventional gasoline. Whatever documents (hardcopy or electronic) that are currently utilized for business purposes to memorialize the transaction should be annotated with the PTD information. If the transferee already has received a PTD from a transferor, for a particular delivery of gasoline due to a difference in the time between the change of custody and the change of title, EPA would not require the transferor to provide the transferee with another PTD unless there has been a modification or correction in the information provided on the first PTD between the time of the custody change and the title change. If one party is given title to a particular volume of gasoline and another party is given custody, the transferor should provide an appropriate PTD to each transferee.(7/1/94)

20. **Question:** What, specifically, are the minimum and/or maximum standards required on product transfer documents for benzene, oxygen, and RVP using the simple model?

Answer: As per § 80.77 of the regulations, the PTD's for simple model RFG need to contain the following min/max's.

	<u>Averaged Standards</u>
Benzene	1.3 vol% per gal max.
Oxygen	1.5 wt% per gal min. 2.7 wt% per gal max. (VOC Controlled)
RVP	3.5 wt% per gal max. (Non-VOC-Controlled) 7.4 psi per gallon max., VOC Control Region 1 8.3 psi per gallon max., VOC Control Region 2

PTD's for simple model RFG designated as VOC-controlled must include the minimums and maximums for oxygen, the maximums for benzene and RVP. For simple model RFG not designated as VOC-controlled, the PTD must include the minimum and maximum for oxygen and the maximum for benzene. If a refinery is subject to a ratchet as a result of a survey failure, the min/maxs on the PTDs should reflect the adjusted standard. In the case of RBOB, product transfer documents will not show the minimum or maximum standard for oxygen, but must specify the amount and type of oxygenate which the RBOB requires in order to meet the properties claimed by the refiner or importer of the RBOB.(8/29/94)

21. **Question:** 80.77(d) requires that transfer documentation include "the location of the gasoline at the time of the transfer." Does this mean the physical address of the transferring facility?

Answer: Yes.(7/1/94)

22. **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.^(12/5/94)

23. **Question:** Where is it required in the regulations that the PTD's for RFG must designate the finished gasoline as meeting the oxygenate standard on the per-gallon or average? Would it not be sufficient to infer the average standards from the listings of min/max's on the PTD? This requirement is not found in § 80.77.

Answer: The PTD requirements for RFG do not require that gasoline be designated as meeting the standards, including the oxygenate standard, per-gallon or average. Section 80.77 does require that PTD information include the minimum and maximum downstream standards with which the RFG complies. The downstream standards are the same regardless of whether the RFG has been certified as meeting standards per-gallon or on average. The downstream minimum/maximum standards must be included in the PTD information because these standards are subject to change with regard to specific covered areas in the event of a standard "ratchet" as a result of a gasoline quality survey failure under § 80.68.^(10/17/94)

24. **Question:** The transfer document requirements state that the name and address of the transferor and transferee be present. When other oil partners, exchangers, are picking up product, will the address of the company headquarters be sufficient since EPA will still be able to trace the path of title and custody to the fuel. In addition, when jobbers pick up product we will have multiple account numbers for one main jobbership. These individual accounts do not contain the address of the jobbership. Is it sufficient that we provide the business name of the jobbership on the transfer document? If the address is later required we could provide it from our internal computer record.

Answer: Yes, the headquarters address of the transferee would be acceptable. When jobbers pick up gasoline they are the transferees in the transaction and the regulations specifically require that an address for all transferees be included on the product transfer documents.^(7/1/94)

25. **Question:** We understand it is not necessary to use the words "transferor" and "transferee" on PTD's as long as the parties giving and receiving custody/title are identified. Our concern was with the carrier receiving custody from a marketing terminal and then passing it on to another party. This makes him a transferee and then a transferor. The concern was having the carrier alter the bill of lading to reflect this change. We understand that as long as we show the name and address of the carrier (or show a carrier identification number that is directly related to the carrier's address) on the PTD and also show the party to whom the product is being shipped, we have sufficient information to satisfy the obligation for us as well as the carrier. Please confirm that this is a correct interpretation.

Answer: Your interpretation is correct. If the paperwork properly reflects the chain of custody through the carrier and shows the proper dates and locations for the different transfers, you have met the PTD requirements with regard to the transfer of custody and the carrier can use the same document to meet his PTD requirements. There normally would be additional PTD requirements concerning the transfer of title, however, because by definition a party other than the carrier has title.^(10/31/94)

26. **Question:** What information needs to be included on RBOB product transfer documents? Is any information about min/max's required?

Answer: The PTD requirements pertaining to RBOB can be found in § 80.77. They include the type of RBOB and the type and amount of oxygenate to be added as well as the min/max's for benzene and RVP, for VOC controlled RBOB only.^(7/1/94)

27. **Question:** Assuming that an RBOB refiner elects to use "worst case" oxygenate blending assumptions in complying with the RFG regulations, is there any special information that the product transfer documents must include other than the requirements set out in § 80.77 of the regulations?

Answer: No, all the product transfer documentation requirements for RBOB are located in § 80.77 of the regulations.^(8/29/94)

28. **Question:** Are the min/maxs that are required on the PTD's for RBOB, intended to address the pre-oxygenate blended RBOB or the post-oxygenate blended RBOB?

Answer: The post-oxygenate blended RBOB.^(7/1/94)

29. **Question:** EPA has indicated that a batch of RFG should be certified based on the volume shipped out of the refinery from the blending tank. However, where a blend is transferred to a storage tank after blending, the batch may be certified based on the volume transferred from the blending tank to the storage tank. In the latter instance, if an amount of gasoline that is different from the certified batch volume is then shipped out of the refinery from the storage tank, should the volume that is actually shipped out be included on the PTDs?

Answer: Yes. ^(5/9/95)

30. **Question:** Must the "specific language required," i.e., statement regarding conventional gasoline, be put on terminal truck Bills of Lading?

Answer: Section § 80.106(a)(1) states that on each occasion "when any person transfers custody or title to any conventional gasoline," the transferor must provide to the transferee documents which include the statement contained in § 80.106(a)(1)(vii). Accordingly, the statement must be contained in either the bill of lading or some other document that the terminal provides to the truck carrier.^(9/12/94)

31. **Question:** Where is it required in the regulations that the RFG must be designated as summer or winter gasoline on the PTD's? For conventional gasoline? This requirement is not found in either 80.77 or 80.106.

Answer: While there is no requirement to list if RFG is "Summer" or "Winter" gasoline in the PTD requirements for RFG, 80.77 does require that RFG or RBOB be identified as VOC-Controlled for VOC-Control region 1 or VOC-Controlled for VOC-Control region 2 or Not-VOC-Controlled in the product transfer documents. The appropriate minimum/maximum's are also required to be listed. There is no similar requirements for Conventional gasoline in 80.106.^(10/3/94)

32. **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: Sections 80.77(j) and 80.106(a)(1)(vi) require, 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 on the PTDs. EPA has received various comments from industry indicating that parties have encountered difficulties in complying with this requirement, particularly in certain situations downstream of the refiner/importer/blender. EPA also now believes this requirement has only limited value as a means of identifying and tracking the gasoline. As a result, EPA will not require compliance with the requirement that EPA assigned registration numbers be included on PTDs. EPA will address deleting §§ 80.77(j) and 80.106(a)(1)(vi) in a subsequent rulemaking. (2/21/95)

33. **Question:** EPA has stated that product codes would satisfy the product transfer documentation requirements if each downstream party is given the information necessary to know the meaning of the product codes. Please explain how this should be done.

Answer: EPA believes that parties normally are able to meet the product transfer requirements by including the required information in the documents that the parties currently use to memorialize the transfer of title or custody of the gasoline. Therefore, as indicated in the July 1, 1994 "Reformulated Gasoline and Anti-Dumping Questions and Answers" document (Section VI.I., Question 2), product codes that are currently used by parties may be used to fulfill the product transfer documentation requirements, provided that: 1) they include all of the information required by the regulations; 2) they are standardized throughout the distribution system in which they are used; and 3) downstream parties (transferees) are given sufficient information to know the full meaning of the codes. EPA does not require or prescribe any specific means for giving downstream parties sufficient information to know the meaning of the product codes. However, the transferor remains liable if in a given case a transferee has not received adequate information to understand the product codes. (9/26/94)

34. **Question:** EPA has stated that "product codes may never be used to meet the requirements for specific language regarding conventional gasoline." We believe that some pipeline companies have published conventional gasoline specifications with the required statement "This product does not meet the requirements..." with the intent that use of that product's code in the batch designation will meet the product transfer document requirements. Will the EPA accept this?

Answer: No, the specific language regarding conventional gasoline at § 80.106(a)(1)(vi) and certain conventional blendstocks at § 80.106(b), can not be included only in product codes. The actual statements must be included in the product transfer documentation. (8/29/94)

35. **Question:** Would it be permissible to send a manual to downstream parties detailing the minimum and maximum values and requirements of each standardized product code (including different product codes for the difference minimum and maximum standards that would apply in the event of "ratcheted" standards), provided that the actual pipeline ticket contained all the verbiage required by § 80.106(a)(1)(vi) for conventional gasoline and § 80.106(b) for blendstock?

Answer: It would be permissible to use codes to represent all required PTD information except for the statements required under § 80.106(a)(1)(vii) and (b) for conventional gasoline and certain conventional blendstocks. The response to Question 4 of the Product Transfer Document section in the August 29, 1994 Question & Answer document is intended to specify that codes may not be used as a substitute for the language required by these sections. But see the updated answer to Question 2, Section VI.I., of the July 1, 1994 Question and Answer document below, regarding the use of product codes where the information is transferred electronically using electronic data interchange (EDI) for transfers of title. (10/17/94)

36. **Question:** Will product codes, such as are currently in use by pipelines, or fuel descriptions (simple, complex, RBOB), in place of minimums and maximums, be sufficient for compliance with the product transfer document requirements?

Answer: The use of product codes would satisfy the product transfer document requirements of §§ 80.77 and 80.106, provided that: 1) these codes reflect all the information required in these sections, including the applicable minimum and maximum standards; 2) these codes are standardized throughout the distribution system in which they are used; and 3) each downstream party is given sufficient information to know the full meaning of the product codes. In the case of a violation where a downstream party has not, in fact, been given the information necessary to know the meaning of the product codes, the product transfer document requirements of §§ 80.77 and 80.106 will not have been met.

A party may use product codes in the manner described to meet some of the transfer document requirements, and use plain English notations to meet other requirements.

In the case of transfers of title (as opposed to transfers of custody), where the information is being transferred electronically using electronic data interchange (EDI), and where product codes are used to meet the product transfer information, the specific language regarding conventional gasoline at § 80.106(a)(1)(vi), and regarding certain blendstock at § 80.106(b), may be reflected as product codes and need not be recited verbatim. In all other cases, however, product codes may not be used to meet the requirements for specific language under §§ 80.106(a)(1)(vi) and (b).^(10/17/94)

37. **Question:** It is our understanding that the conventional gasoline message for product transfer documents "this product does not meet the requirements for reformulated gasoline.." is intended to prevent the sale or use of conventional gasoline in reformulated gasoline covered areas, and that, while other PTD information can be conveyed via product codes, this message must be explicitly present on the PTD. It is understandable that this message be present on PTD's of shipments to service stations so that carriers and service station operators are aware that the product is conventional. However, for bulk custody transfers of gasoline between sophisticated parties within the petroleum industry such as pipelines, marine vessels, railroad cars, etc., the parties involved know what product they are handling, and the product is not directly bound for a service station. Based on this, we believe the explicit conventional message should only be required on PTD's of deliveries to service stations and that other PTD's should be allowed to convey this message implicitly via product code. Do you disagree with this rationale?

Answer: The language regarding conventional gasoline specified at § 80.106(a)(1)(vii) must be included in the product transfer documentation for all transfers of conventional gasolines, and this specific language requirement may not be satisfied through the use of product codes. However, in the case of transfers of title (as opposed to transfers of custody), where the information is being transferred electronically using electronic data interchange (EDI), and where product codes are used to meet the product transfer documentation, the specific language regarding conventional gasoline at § 80.106(a)(1)(vii), and regarding certain blendstock at § 80.106(b), may be reflected as product codes and need not be recited verbatim. See also the October 17, 1994 update to Question 2, Section VI.I., of the July 1, 1994 Question and Answer Document.^(11/21/94)

38. **Question:** EPA has said that the specific language regarding conventional gasoline [80.106(a)(1)(vii)] and blendstocks [80.106(b)] may be reflected as product codes and need not be recited verbatim when the information is being transferred electronically using electronic data interchange (EDI). We are considering attaching information to both the invoice and exchange statement. These statements are generated electronically and will be sent to the transferee's of title via an automated fax system. Will the automated fax system be considered to be EDI for meeting the requirements? If the transferee does not have a fax line available could the exchange statements or invoices be mailed and still exclude the conventional and blendstock special wording if these occurrences involved only a small volume of the exchange statements or invoices delivered? The development of two systems for the same purpose would be costly.

Answer: EPA does not consider automated faxing to be a form of EDI, therefore the entire language in 80.106(a) and (b) would be required to be included verbatim.^(11/21/94)

39. **Question:** Would it be acceptable to provide all required product transfer document information on the bill-of-lading, including the transferee's name, except for the transferee's address, provided that the address is included on a follow-up invoice?

Answer: As long as all product transfer documentation information is provided to the transferee, either prior to, during or immediately following the transfer of title or custody of the gasoline, the PTD requirements are met. As a result, it would be acceptable to provide all PTD information, including the transferee's name, on a truck bill-of-lading, with the transferee's address included on a follow-up invoice.^(9/26/94)

40. **Question:** Section 80.77 states that product transfer documents should include the name and address of the transferor and transferee. In the interest of keeping the PTD's as a single document, would it be permissible to retain the addresses of the transferees in a permanent file and not print them on the PTD's? We believe it would be in the best interest of the EPA and the industry to maintain all PTD information within a single document and the addition of the addresses may make it difficult to meet both EPA and Department of Transportation requirements on a single page.

Answer: Under § 80.77(a) and (b), the product transfer documents for each transfer of title or custody must include both the name and address of the transferor and the transferee. However, EPA will consider this requirement to be met in a case where only the names of the transferor and/or the transferee are listed in the documents that are provided at the time of the transfer of title or custody, provided:

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

^(10/17/94)

41. **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.

(12/5/94)

42. **Question:** During a transition period, refiners will produce VOC-controlled RFG that is blended with non VOC-controlled RFG downstream of the refinery in order to blend down RVP prior to the beginning of the VOC season. How will the resultant mixture be classified and identified on the PTD issued for instance by a terminal?

Answer: The resulting gasoline should be listed as non VOC-controlled RFG on the PTD's, unless the resulting blend meets the requirements to be designated as VOC-controlled gasoline. (7/1/94)

43. **Question:** We would expect to purchase or exchange for reformulated gasoline in reformulated areas. At any given time, a tank could contain product from upwards of 3 different commingled RFG batches. As a distributor, is it sufficient to state on a bill of lading that all products conform to RFG, or must each of the batches in this tank be listed on the transfer document?

Answer: This question assumes that PTD's must include batch identification numbers, which is incorrect. PTD's are not required to include the batch number or the name of the refinery that produced the gasoline. A distributor should include all the required information listed in § 80.77 and § 80.106 for the appropriate type of gasoline.

While the name and registration number of the refinery or importer is required for complex model RFG or RBOB gasoline produced prior to January 1, 1998, this RFG or RBOB should not be combined with any other RFG or RBOB that was produced at another refinery or imported by another importer. (7/1/94)

44. **Question:** After a batch of gasoline is certified as RFG, it is given a batch number. How far "downstream" does the batch number follow the material? If a batch is commingled in a terminal with other compatible material belonging to a variety of terminalling customers, does the batch lose its batch number at that time?

Answer: There are no requirements to identify the batch number in the transfer documentation. Once the batch is commingled with other RFG, the refineries' batch numbers are no longer useful to identify the resulting fungible RFG. (10/17/94)

45. **Question:** How should PTD messages be handled for mixtures of simple and complex model RFG? Can we use either simple or complex model message until the end of April 1998?

Answer: Prior to January 1, 1998, simple model and complex model RFG may not be commingled, and under § 80.77(g)(1)(iii), refiners and importers are required to identify RFG or RBOB in product transfer documents as certified under the simple model standards or the complex model standards. However, after January 1, 1998, there is no requirement to identify RFG or RBOB in product transfer documents as certified under the simple model standards or complex model standards. (11/10/97)

46. **Question:** If a purchased lot of certified RFG is combined with another lot of fungible certified RFG in a terminal, and a portion of the mixture is then sold to a third party, what form would the product transfer documentation take? Would it be necessary to convey documentation on a pro rata basis to all purchasers of the blended material?

Answer: There is no specific form or required format for the produce transfer document (PTD) information. It should be included on the documents used to memorialize the transfer of the fuel and should reflect the amount and type of RFG sold or transferred to the third party, as well as the other information required in §80.77. Therefore, it would be necessary to provide PTD information to all purchasers of the blended material for the quantity of RFG that they are receiving custody or title of.

(8/29/94)

47. **Question:** Section 80.78(a)(8) prohibits "any person" from combining any VOC-controlled RFG produced using ethanol with any VOC-controlled RFG using any other oxygenate between January 1 and September 15. There is no exclusion from this prohibition for retail outlets or wholesale purchaser-consumer facilities as there is for certain other mixing prohibitions. How is the retail outlet expected to be aware that it is receiving a shipment of gasoline that cannot be commingled with gasoline produced using a different oxygenate?

Answer: The RFG regulations were amended on July 20, 1994, to include a product transfer documentation requirement, found in 80.77(g)(3), requiring the "identification of VOC-controlled reformulated gasoline or RBOB as gasoline or RBOB which contains ethanol, or which does not contain ethanol." This requirement will result in retailers having the necessary information to determine the type of oxygenate used in the gasoline.^(10/17/94)

48. **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 a statement such as the following on all tickets: "Maximum RVP of 8.3 psi if gasoline is designated as VOC controlled for Region 2." 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 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 identified as being VOC controlled or not VOC controlled in accordance with § 80.77(g)(1)(i).^(1/17/95)

49. **Question:** Does the product transfer documentation have to physically accompany a shipment of gasoline or could the documentation be sent electronically or by facsimile to the destination prior to the delivery arrival?

Answer: Whenever possible the PTD's should accompany the shipment of gasoline. However, in circumstances like pipeline transfers where this would be impossible, the PTD's do not have to physically accompany the shipment. The regulations (§ 80.77 and § 80.106) require that on each occasion when any person transfers custody or title of any reformulated gasoline or RBOB or conventional gasoline, the transferor shall provide the transferee the appropriate PTD's. It does not specify the method required for the transferor to provide this information.^(7/1/94)

50. **Question:** Could a refiner rely upon transfer documents produced by a pipeline to meet the refiners (i.e., shipper's) responsibility as it relates to the generation of transfer documents and would such a document provide an adequate defense for the refiner?

Answer: If a refiner is the transferor to a pipeline, then the refiner would be responsible to provide documentation to the pipeline.^(7/1/94)

51. **Question:** Who is the transferor and who is the transferee in the case of an exchange transaction? The sequence of physical custody is from terminal to truck to retail outlet, but the sequence of legal custody is from the terminal to exchange partner to marketer to truck driver to retail outlet. How many transfer documents must be generated? Can one document accompany the shipment, with successive parties adding their respective names to the document upon transfer?

Answer: Any party who is receiving title or custody of the delivery would be considered a transferee, any party who relinquishes title or custody would be considered a transferor and any party who both receives and relinquishes title or custody would be both a transferee and a transferor. All transferors

are responsible to provide all of their transferees PTD's containing the appropriate information. In some circumstances (where custody and title are being delivered to the same subsequent parties), it may be possible to utilize just one document that is updated each time the delivery is transferred. But the most appropriate way to meet PTD requirements is to include the PTD information on documents currently used to memorialize the transfer of title or custody.^(7/1/94)

52. Question: On a shipment from our refinery to a pipeline we are often providing transfer of title to another oil company while simultaneously transferring custody to the pipeline. Pipeline companies are telling us that as long as the shippers code (as part of the batch designation) identifies that exchange partner receiving title, we do not have to generate a separate transfer document to that exchange partner. Is this O.K?

Answer: No. As the transferor, you would be responsible for providing PTD information to any party that directly receives custody or title of a delivery of RFG, RBOB or conventional gasoline from you. In the above scenario you would have to provide PTD information to both the pipeline actually receiving the product and to the other oil company taking title of the gasoline from you.^(8/29/94)

53. Question: EPA has stated that a Product Transfer Document must be provided to the transferee in an exchange transaction. Is this true when this exchange is instantaneous and the transferee has no ability to alter the product?

Answer: Yes. When any person transfers title or custody of any gasoline (with the exception of gasoline sold or dispensed at a retail outlet or wholesale purchaser-consumer for use in motor vehicles), the transferor must provide to the transferee the specific information pertaining to the fuel required in the product transfer documentation sections, regardless of the transferee's ability to alter the product.^(8/29/94)

54. Question: Assuming that PTD's are required for exchange transactions and the data could be electronically stored in a manner ensuring the security and integrity of the data, would it be sufficient to provide transferees with access to electronic PTD's if the PTD's contain the same data as the original except for the absence of the drivers signature? Would it be sufficient to make the PTD's available through an electronic interface or would the transferor be required to electronically transmit?

Answer: The regulations require that the transferor must provide to the transferee documentation that includes all the PTD information, not just make it accessible to the transferee. As a result, the PTD requirements would not be satisfied if the transferee is merely given access to the PTD information.^(8/29/94)

55. Question: At a recent seminar hosted by SIGMA, EPA officials indicated that transfer documentation would be satisfactory if initiated by the transferee as long as both parties agreed to this system. Please confirm this understanding?

Answer: Your understanding is correct. However, while EPA would not object to a cooperative agreement between the transferor and the transferee, the transferor remains liable if the transferee does not have all the required PTD information for each batch.^(9/26/94)

56. Question: The EPA has stated that PTD's include documents that reflect the transfer of ownership and physical custody of gas or blendstock, including invoices, receipts, bills of lading, manifests and pipeline tickets. Each of these documents contain different pieces of information required by the EPA. Some specify quality, quantity, parties of transfer, etc. Some are available prior to product shipment and some, such as pipeline meter tickets and final Bills of Lading, are provided after the product moves. Can we assume that the information identifying place of use restrictions, segregation requirements or standards of performance can be provided to the transferee prior to the product shipment? But that other transfer document requirements such as final quantity shipped, can be provided to the transferee after the

product moves?

Answer: Yes. The regulations require PTD's be provided by the transferor to the transferee on each occasion when any person transfers custody or title of RFG, RBOB or conventional gasoline. The regulations do not specify at what point in the delivery PTD's are to be provided for each occasion.^(7/1/94)

57. **Question:** When a party lifts gasoline at a terminal, there is usually both a transfer of custody (to the carrier) and a transfer of title (to the person taking title). If all required PTD information is given to the carrier through a bill of lading, is it also necessary to provide a separate PTD to the person taking title? If so, does a single PTD suffice when the person taking title utilizes his own truck as opposed to common carrier trucks?

Answer: The transferor must provide PTD information to both the transferee of custody and the transferee of title. As a result, the required PTD information must be provided to both the carrier (the transferee of custody) and the person taking title (the transferee of title). If the the same party is receiving both custody and title of the fuel (when utilizing his own trucks as opposed to common carrier trucks), the PTD information would only have to be provided to the party a single time. ^(5/23/95)

58. **Question:** Does EPA make any distinction in terms of timeliness between PTD's which memorialize a transfer of title as opposed to those which memorialize a transfer of custody? For example, exchange statements detailing liftings by an exchange partner ordinarily are prepared only after the close of each month's business. Would such statements meet the PTD requirements if they contain all required PTD information?

Answer: Section 80.77 does not distinguish between transfers of custody and transfers of title. Nevertheless, EPA believes the two situations may be different in terms of the timing necessary for PTD information. In the case of transfers of custody, the PTD information should be transferred before, during, or immediately following the actual transfer because the transferee will have custody of the gasoline in question and must know how to handle it.

In the case of transfer of title, on the other hand, the transferee may choose to rely on the custody transferee to properly handle the gasoline (e.g., where the custody transferee is a common carrier pipeline.) In such a situation, the PTD requirements may be satisfied if the title transferee receives the required information as part of the transfer of the normal business documents used to memorialize the title transfer. This would be true even if the normal business practice is to provide title transfer documents only at the close of each month's business.

In the event the custody transferee's handling of the gasoline results in a violation of the RFG standards, however, the owner of the gasoline (the title transferee) would be presumed liable for the violation, and it would be no defense that this owner had not received the required PTD information.^(10/17/94)

59. **Question:** Who is the transferee in a custody transfer where the owner of the receiving tank/truck/barge is different than the operator (scheduler) of the tank/truck/barge, who may also be different from the company that provides the employees of the site? Can a company assume that when multiple parties can be the transferee, that one can take on the role of being the designated responsible party.

Answer: Regarding transfers of custody, PTDs are intended to be given to the person physically taking custody of the product. Where multiple parties are involved in a physical transfer of the product, and the transferor does not know the name of the person physically taking custody of the product, the name of that person may be omitted from the PTD so long as this information has been recorded on some other document that memorializes the transfer of custody of the product, and this information is available

to EPA on request. (5/23/95)

60. **Question:** In RFG areas, at unattended cardlock fueling facilities, where should the three most recent PTDs be maintained? It seems to make little sense that they be stored on-site, since the driver normally does not leave any paperwork at the unattended cardlock facility, and an EPA inspector would not have access to them due to the site being unattended. Since the driver normally forwards the PTDs for a transaction at an unattended cardlock fueling facility to the marketer's nearest office, would this be the appropriate location to maintain the PTDs for these transactions?

Answer: In the situation described, it would be acceptable for the PTDs to be maintained at the marketer's nearest office. (5/23/95)

J. CALIFORNIA ENFORCEMENT EXEMPTIONS

1. **Question:** Under § 80.81(b)(2), California refiners are exempt from the independent analysis requirements set forth in § 80.65(f). Does this exemption allow California refiners to use a computer-controlled in-line blending operation without first obtaining an exemption from EPA?

Answer: Yes. Refiners of California gasoline may use computer-controlled in-line blending to produce RFG without obtaining an exemption under § 80.65(f)(4). However, RFG that does not meet the definition of "California gasoline" in § 80.81(a)(2) is subject to the independent analysis requirement, even if it is produced in California, and would require an exemption to allow computer-controlled in-line blending. (7/1/94)

2. **Question:** Starting with the first tender of RFG shipped later this year (1994), transferors are required to provide transferees with transfer documents detailing the type of RFG (VOC or non-VOC, oxygenate program or not, simple or complex) and various minimum or maximum quality statements (oxygen, benzene and RVP for simple model RFG; oxygen, benzene, VOC and NOx for complex model RFG). In California, the Los Angeles and San Diego areas are covered areas for both the RFG and wintertime oxygenated programs. The oxygenated fuels program in California requires 1.8 to 2.2 weight % oxygen for control areas during the winter control periods, as opposed to 2.7% elsewhere. Since RFG sold in California will satisfy the oxygenated program requirements without additional oxygenate, will transfer documents be required to differentiate between RFG and OPRG?

Answer: Not after March 1, 1996. Section 80.81(c)(9) provides an exemption from the RFG product transfer documentation requirements contained in § 80.77 for California gasoline manufactured or imported subsequent to March 1, 1996, that meets the requirements of the California Phase II RFG program. This exemption applies to § 80.77(g)(1)(ii), which requires the proper identification of reformulated gasoline as "[o]xygenated fuels program reformulated gasoline" or "[n]ot oxygenated fuels program reformulated gasoline." California RFG manufactured prior to March 1, 1996, is subject to the product transfer documentation requirements, however. (7/1/94)

3. **Question:** How will EPA enforce their regulations in California? Will the Agency defer to the California Air Resources Board?

Answer: Prior to the start of the California Phase II RFG program in March 1996, EPA generally will enforce the federal RFG program California in the same manner in which it will be enforced in other parts of the nation. The principal difference is that compliance survey and independent analysis requirements will not apply to California gasoline during that period.

Subsequent to the start of the California Phase II program, EPA will rely to a large extent on the proven ability of CARB to enforce its fuels programs. However, EPA retains the authority to monitor and

enforce the federal RFG regulations in California. Such monitoring and enforcement may be done through sampling and testing of California gasoline and/or by the auditing of State-mandated records (which must be retained for 5 years under the federal regulations). In addition, refiners and importers of California gasoline are still subject to the registration (§ 80.76) and batch testing (§ 80.65(e)(1)) requirements of the federal regulations.^(7/1/94)

4. Question: Since the California winter oxygenate waiver will not allow RFG produced for Southern California during the winter of 1994/1995 and 1995/1996 to exceed 2.2 weight % while aiming for a 2.0 weight % oxygen target, EPA should exempt such gasoline from the OPRG designation provisions of § 80.65(d). Does EPA concur?

Answer: No. Section 80.81(c)(2) exempts refiners, importers and oxygenate blenders of California gasoline manufactured or imported subsequent to March 1, 1996, from the designation of gasoline requirements contained in § 80.65(d). Reformulated gasoline produced or imported prior to that date must be designated in accordance with § 80.65(d).^(7/1/94)

5. Question: How will the California exemption from EPA's final RFG rule be affected if California postpones the introduction of CARB Phase 2 reformulated gasoline?

Answer: On April 12, 1994, CARB issued a notice of public hearing concerning certain proposed amendments to the State's Phase 2 reformulated gasoline program. The hearing on these amendments was held on June 9, 1994. At this hearing CARB approved changes to the State's Phase 2 reformulated gasoline regulations. These changes included certain implementation dates for the Phase 2 RFG program. Under the pre-existing California regulations, gasoline anywhere in the distribution system was subject to "cap" limits starting on April 1, 1996. The approved revisions change this date to April 15, 1996, for gasoline anywhere in the system except for the fueling of motor vehicles at service stations and other fueling facilities, and to June 1, 1996, for all fueling facilities.¹ The approved amendments do not change the pre-existing implementation date of March 1, 1996, for compliance with the more stringent "flat" or "averaging" limits for gasoline supplied from a refinery or import facility.

These changes in the implementation dates for the cap limits throughout the distribution system do not affect the timing of the California enforcement exemptions in the federal RFG regulations. The "cap" limits for gasoline leaving refineries and import facilities continues to apply as of March 1, 1996, the date on which most of the enforcement exemptions are based.^(7/1/94)

6. Question: If a California refiner can certify a CARB Phase 2 alternate gasoline formula using the State's predictive model, and that formula requires less than 1.8 percent oxygen, will it still satisfy the federal RFG specifications?

Answer: No. Under § 80.81(e)(2), if a refiner certifies under an alternative formula, then the exemption does not apply unless the refiner makes certain timely submissions to EPA. The refiner must submit to EPA a written demonstration that the certified gasoline formulation meets each of the complex model per-gallon standards specified in § 80.41(c). The complex model per-gallon standards in § 80.41(c) include a requirement that oxygen content be equal to or greater than 2.0 percent, by weight. A gasoline

¹ The approved amendments include an exception from the April 15, 1996, compliance date for deliveries of gasoline from bulk plants to service stations and bulk purchaser-consumers. In addition, under the approved amendments it is not illegal to dispense noncomplying gasoline into a motor vehicle after June 1, 1996 if it is shown that the noncompliance was due to gasoline delivered prior to April 15, 1996 (or from a bulk plant prior to June 1, 1996).

formulation that contains less than 1.8 percent oxygen would not meet this standard, and the California enforcement provisions would become inapplicable pursuant to the provisions of § 80.81(e)(2)(ii).^(7/1/94)

7. Question: What oxygen level will be required in reformulated gasoline produced for Southern California during the summer of 1995? What oxygen level will be required in reformulated gasoline produced for Southern California during the summer of 1996? Because the CARB Phase II RFG standards specify a 1.8 to 2.2 weight % oxygen range starting on March 1, 1996, will refiners be allowed to target this range in Southern California during the summer of 1996?

Answer: Reformulated gasoline produced for the Southern California areas covered by the federal RFG program (i.e., San Diego County and the Los Angeles-Anaheim-Riverside area, as defined in § 80.70(a)) will be required to meet the oxygen content as well as other standards specified in the federal regulations during both 1995 and 1996. Although the Agency concluded that the CARB Phase 2 RFG oxygen "flat limit" of 1.8 to 2.2% would in practice be equivalent to the 2.0% minimum oxygen content required by the Clean Air Act², this conclusion was made for the purpose of determining whether exemptions from certain enforcement provisions of the federal regulations would be appropriate. Gasoline that qualifies for the enforcement exemptions under § 80.81 must still comply with the federal reformulated gasoline standards even after the start of the CARB Phase 2 program in March 1996, including the oxygen content standards specified in § 80.41 (e.g., at least 2.0% by weight).^(7/1/94)

8. Question: Although California gasoline is exempted in general, are there compliance requirements that would necessitate independent sampling and testing in that state?

Answer: Yes. Section 80.81(b)(2) provides an exemption from the independent analysis requirements of § 80.65(f) for California gasoline, as defined in § 80.81(a)(2). Reformulated gasoline that does not meet this definition (e.g., RFG that is produced in California but sold or intended for sale outside the State) would be subject to the independent analysis requirements.

In addition, the exemption could be lost under either of two circumstances: (1) A gasoline formulation is certified under the California predictive model or vehicle testing provisions, and its refiner, importer or oxygenate blender does not comply with the requirements of § 80.81(e)(2); and/or (2) A refiner, importer or oxygenate blender has been assessed a penalty for a violation of the federal or California RFG regulations (see § 80.81(e)(3)). In either of these cases, the refiner, importer or oxygenate blender would lose the exemption specified in § 80.81, including the exemption from the independent analysis.^(7/1/94)

9. Question: Regarding refiners who have a California exemption, is it correct to assume the following for RFG made to be sold in California from January 1, 1995, until March 1, 1996 (the start of the California Phase II RFG program):

A. Even if the refiner averages, it does not have to participate in the retail compliance survey;

B. The refiner does not have to have sampling and testing done by an independent laboratory;
and

C. For batch sampling and analysis, the refiner may use methodologies prescribed in Title 13 of the California Code of Regulations in lieu of the EPA-approved methodologies.

Answer:

² See 58 FR 11747 (February 26, 1993).

A. Yes. Section 80.81(b)(1) exempts refiners, importers and oxygenate blenders of gasoline that is sold, intended for sale, or made available for sale as a motor fuel in the State of California from the compliance survey provisions of § 80.68 for such gasoline.

B. Yes. Section 80.81(b)(2) exempts refiners, importers and oxygenate blenders of California gasoline (as defined in § 80.81(a)(2)) from the independent analysis requirements of § 80.65(f) for such gasoline.

C. Yes. Section 80.81(h) allows refiners, importers and oxygenate blenders of California gasoline (as defined in § 80.81(a)(2)) to use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, §§ 2260 et seq., for such gasoline in lieu of any applicable sampling and analysis methodology specified in the federal RFG regulations. Section 2263(a) and (b) of the California regulations prescribes the sampling procedures and test methods for the California Phase II program, and § 2263(c) allows the use of another test method "following a determination by the executive officer that the other method produces results equivalent to the results with the specified method." Thus, the use of any test method determined by CARB to be equivalent to a prescribed method under § 2263(c) of the California regulations is authorized under § 80.81(h) of the federal regulations. However, a refiner that chooses to use California sampling and/or analytical methods for its California gasoline may not use such methods for its non-California gasoline. Section 80.81(h) allows the use of California methodologies only for California gasoline, and not for any other RFG that the regulated party may produce or import.

All of these provisions apply from the start of the federal RFG program on January 1, 1995, until December 31, 1999.^(7/1/94)

10. **Question:** Section 80.80(e)(2) generally provides that a refiner or importer that fails to meet the independent analysis requirements of § 80.65(f) may not use the results of sampling and testing carried out by the regulated party as evidence of the properties of gasoline giving rise to a violation. Does this provision apply to California gasoline, which is exempt from the independent testing requirements?

Answer: No. Because § 80.81(b)(2) exempts California gasoline from the § 80.65(f) independent analysis requirements, the "penalty" set forth in § 80.80(e)(2) for failure to meet these requirements is not applicable to such gasoline, unless this exemption is lost under § 80.81(e).^(7/1/94)

11. **Question:** Does EPA agree that the California Exemption section of the RFG rule facilitates using the complex model for anti-dumping with the Commencement of CARB Phase 2 RFG effective 3/1/96?

Answer: Section § 80.41(i) of the federal regulation requires that during each calendar year 1995 through 1997 any refinery or importer shall be subject to the simple model standards or the Phase I complex model standards, at the option of the refinery or importer. However, no refinery or importer may be subject to a combination of the simple and complex model standards during the same calendar year. Any refiner or importer that elects to achieve compliance with the anti-dumping requirements can use either the simple or complex model but must meet the requirements of Subpart D of these regulations for the specified model. If the refiner or importer elects to use the complex model during a period prior to January 1, 1998, then the refiner or importer is subject to the Phase I complex model standards. Therefore, if a refiner or importer elects to use the simple model beginning on January 1, 1996, the regulations prohibit switching to the complex model on March 1, 1996 or at any other time during the same calendar year.^(7/1/94)

12. **Question:** What options are available to refiners (and other regulated parties) in California for downgrading federal RFG in 1995, and CARB Phase II RFG in 1996 and beyond, to conventional gasoline for use outside the State of California. Such downgrading may be necessary, for example, at a terminal located in California downstream of the refinery but close to the California border with Arizona or Nevada,

and that receives product via a pipeline that also goes into Arizona or Nevada. There undoubtedly will be situations where "California" gasoline is shipped via the pipeline to this terminal, but the terminal tanks are too full to receive all of this "California" gasoline. In such a case it will be necessary to allow the "California" gasoline to continue moving down the pipeline to a terminal outside California. In most cases, this gasoline would have been in fungible storage prior to shipment on the pipeline and the sample obtained at the refinery will not represent the gasoline diverted out of California.

Answer: Normally, RFG may be redesignated as conventional gasoline without any restrictions, so long as the product transfer documents reflect this redesignation, and the redesignated gasoline is in fact used as conventional gasoline. See the Answers to Questions IX-B-13 and 14 of the July 1, 1994 Question and Answer Document. This answer is not true in the case of California gasoline, however, because the testing methods used in California are not required to be the test methods specified in § 80.46. Under § 80.81(h) refiners and importers of California gasoline may use the test methods allowed by California State regulations, in lieu of the § 80.46 test methods. This testing difference is allowed both before and after the CARB Phase II standards become effective in March, 1996. As a result, gasoline produced for use in the State of California does not necessarily meet the testing requirements for federal RFG or anti-dumping compliance.

The options available for redesignating California gasoline as federal conventional gasoline are the following.

First, if the refiner or importer tested the gasoline in question using the test methods specified under § 80.46, the gasoline may be used in or out of the State of California using the same approaches available in the remainder of the country. This would be true in the case of gasoline produced to the federal anti-dumping standards for use outside the Los Angeles or San Diego RFG covered areas before March 1996 (no redesignation would be necessary), or in the case of gasoline produced to the federal RFG standards before March 1996 or to the California Phase II standards beginning in March 1996 (redesignation would be necessary). Note that if the gasoline in question is part of a fungible mixture, in order to use this option all gasoline in the mixture must have been tested using the methods specified under § 80.46.

Second, the gasoline may be used as federal conventional gasoline without having been tested using the methods specified under § 80.46 provided that:

- a) The gasoline in question was produced in accordance with the standards and requirements for the State of California, including any testing requirements, and the gasoline in question meets all standards for either RFG (under § 80.41) or for anti-dumping (under § 80.101).
- b) The gasoline in question was intended for use in the State of California when produced or imported.
- c) The gasoline in question was transported via pipeline, and when shipped was reasonably expected to be delivered to a terminal in the State of California.
- d) Due to unforeseen operational necessity the gasoline could not be delivered to any terminal located in the State of California, and the only feasible option was to deliver the gasoline to a terminal located outside the State of California.
- e) The parties involved (including the pipeline and the owner of the gasoline in question) retain documents that describe the intended destination of the gasoline and the nature of the operational necessity that resulted in the gasoline being delivered to

a terminal outside the State of California.

(8/29/94)

13. **Question:** The California enforcement exemption provided in the RFG regulations can be lost as a result of the assessment of civil, criminal or administrative penalty for violation of the federal RFG or anti-dumping provisions or for violation of CARB's Phase II RFG regulation. The effective party may petition EPA for relief for good cause. Good cause may include a showing that the violation was not a substantial violation of the federal or California RFG standards. However, under a literal interpretation of this provision, a California refiner could lose the enforcement exemption over a trivial manner. Can EPA apply narrower criteria, including establishment of willful wrongdoing criteria and the documentation or repeated offenses over a specific period of time before revocation of the exemption can occur? Additionally, clarification is needed on exemption implications of a settlement between a California refiner and CARB on California Phase II RFG enforcement matters. Can a violation of CARB Phase II RFG regulation not resulting in non-compliance with federal RFG be considered insufficient grounds for losing the exemption?

Answer: Each violation of CARB's RFG standard will be examined for its federal implications on a case-by-case basis.(8/29/94)

14. **Question:** If a California refinery is producing all of its gasoline to CARB specifications but ships a small portion (<5%) to Nevada and Arizona, does that portion have to be recorded and reported as conventional gasoline? The additional recordkeeping and reporting would appear to be a totally wasted effort since gasoline meeting CARB specs will be substantially better in all respects than baseline gasoline.

Answer: Under § 80.81(b)(2), California gasoline (and no other gasoline) is exempt from certain RFG and anti-dumping requirements, such as the requirement to use the test methods specified under § 80.46. California gasoline is defined in § 80.81(a)(2) as "any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California...." As a result, gasoline that does not meet this definition would be subject to all federal requirements, including reporting, recordkeeping and testing requirements. For example, gasoline that is produced in California but is sold or intended for sale outside the State would have to meet all requirements that apply to gasoline produced in the remainder of the country. These requirements apply regardless of whether the gasoline in question is used in an RFG covered area outside California and is classified as RFG, or if the gasoline is not used in an RFG covered area and is classified as conventional gasoline.(10/17/94)

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

Answer: Section 80.81(d) provides that, subsequent to March 1, 1996, refiners, importers and oxygenate blenders of California gasoline shall demonstrate compliance with the RFG and anti-dumping standards specified in §§ 80.41 and 80.90 by excluding the volume and properties of its California gasoline from all of the gasoline (RFG or conventional) it produces that is not California gasoline. This section also provides that this does not exempt any refinery from demonstrating compliance with the standards for all gasoline that it produces or imports. While refiners are generally exempt from recordkeeping, reporting and various other provisions for California gasoline, they are not exempt from the RFG and anti-dumping standards themselves.(11/28/94)

16. **Question:** Should the summer toxics model be used for RFG during the 1995 California VOC transition seasons (i.e., before May 1 and after September 15) when California regulations limit RVP to 7.8 psi?

Answer: RFG that is designated as VOC controlled by the refiner must use the summer model and must comply with the RVP standard for the appropriate VOC control region. RFG that is designated as non-VOC controlled by the refiner must use the winter model. Refiners may not designate RFG as VOC controlled unless it meets the federal RVP standard for VOC controlled RFG for the appropriate VOC control region. Consequently, California RFG produced to 7.8 psi for use outside the federal VOC control period (i.e., before May 1 and after September 15) would use the winter model. (5/9/95)

17. **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(l) 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(l) 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). (10/31/95)

[NOTE: The following letter was mailed on February 29, 1996.]

Douglas F. Henderson
Executive Director
Western States Petroleum Association
505 No. Brand Blvd., Suite 1400
Glendale, California 91203

Dear Mr. Henderson,

You have requested, on behalf of gasoline refiners in California, that EPA modify certain requirements that apply in California under the federal reformulated gasoline (RFG) regulations. This action is believed necessary due to conflicts between the federal RFG program and the California Phase 2 reformulated gasoline program scheduled to begin on March 1, 1996. This letter addresses three of the

matters you have raised. EPA is still evaluating the remaining issues, and will respond separately to those requests.

As you know, section 211(k) of the Clean Air Act (the Act) requires EPA to establish standards for RFG to be used in specified Ozone nonattainment areas (covered areas), as well as standards for non-reformulated, or conventional, gasoline used in the rest of the country, beginning in January, 1995. The RFG covered areas in California are Los Angeles and San Diego, and, beginning June 1, 1996, Sacramento, as a result of its redesignation as a Severe Ozone nonattainment area. The Act requires that RFG result in reductions in VOC and toxics emissions, no increase in NOx emissions, and also sets standards for oxygen, benzene and heavy metals. EPA promulgated the final RFG regulations on December 15, 1993.

During the federal RFG rulemaking, and in response to comments by California refiners, EPA concluded (1) that emission reductions resulting from the California Phase 2 standards are equal to or more stringent than the federal RFG standards, and (2) that the California Air Resources Board's (CARB's) enforcement program will be sufficiently rigorous that compliance with the California Phase 2 standards will be ensured. As a result, 40 CFR § 80.81 of the RFG regulations exempts certain refiners of California Phase 2 gasoline from a number of federal RFG enforcement provisions intended to demonstrate compliance with the federal standards. The federal RFG standards nevertheless apply in California. Moreover, California refiners are not exempt from federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover gasoline exported from California.

Use of the California Test Methods.

Both the federal RFG and the California Phase 2 programs require refiners to use certain test methods to demonstrate compliance with the standards applicable under these programs. However, in the case of the tests for four parameters (benzene, sulfur, oxygen, and aromatics) the methods specified under the two programs are different.

The 40 CFR § 80.81 exemption allows California refiners to use the California Phase 2 program's test methods instead of the federal test methods when producing California Phase 2 gasoline that is used in California. However, California refiners are required to use the federal test methods specified under 40 CFR § 80.42 for gasoline that is used outside California, including conventional gasoline subject to the anti-dumping standards specified under 40 CFR § 80.101. You have requested that EPA extend the test method exemption to gasoline produced by California refiners that is exported from California.

EPA now recognizes that under certain conditions it may be appropriate to allow the use of non-federal test methods for gasoline exported from California because of the unique situation that exists in California, as compared to the remainder of the country. In particular, the standards under the California Phase 2 program will result in lower emissions than will result from federal RFG. Moreover, CARB is expected to enforce these standards in a comprehensive, aggressive manner that will result in high compliance.

Therefore, EPA intends to initiate a rulemaking to change the federal RFG regulations to allow this additional testing flexibility for California refiners. In addition, for a limited time and in certain situations, EPA will immediately give California refiners additional testing flexibility. In particular, EPA will not enforce the requirement, at 40 CFR §§ 80.65(e)(1) and 80.101(i)(1)(i)(A), to test gasoline using the federal test methods specified under 40 CFR § 80.46 for benzene, sulfur, oxygen or aromatics, with regard to gasoline that is produced in or imported into California but that is used outside California, provided the refiner or importer meets the following conditions:

(1) The gasoline must be produced at a refinery located in California at which gasoline meeting the California Phase 2 standards and requirements is being produced; or the gasoline must be imported into California from outside the United States as California Phase 2 gasoline that meets the standards and requirements of the California Phase 2 program;

(2) When exported from California, the gasoline must be classified as federal conventional gasoline, and may not be classified as federal RFG; and

(3) The refiner must correlate the results from any non-federal test method to the method specified under 40 CFR § 80.46 for any gasoline that is used outside California. This correlation must be satisfactorily demonstrated to EPA upon request.

Enforcement of the RFG requirements in this manner will expire at the conclusion of the rulemaking to incorporate these changes to the testing method requirements in the federal RFG regulations. EPA intends to complete the rulemaking by September 1, 1997, at which time the requirements will be enforced as promulgated.

Adjustment of the Reid Vapor Pressure Lower Limit.

The federal RFG program includes standards for the volatility, or Reid vapor pressure (RVP), of gasoline. The maximum RVP of RFG is controlled primarily because of the increased VOC emissions that result from gasoline with higher RVP levels.

In addition, the minimum RVP of both reformulated and conventional gasoline is controlled because of limitations in the data that were available to formulate emissions models used in the federal RFG program. The minimum RVP standard also addresses vehicle driveability problems, such as poor starting and running, that can occur when low volatility gasoline does not vaporize in the vehicle engine. As a result, under 40 CFR § 80.42(c)(1), the nationwide summertime minimum RVP allowed in RFG is 6.6 pounds per square inch (psi), although under 40 CFR § 80.45(f)(1) this minimum RVP standard changes to 6.4 psi beginning in 1998.

The California Phase 2 program sets a maximum summertime volatility standard of 7.0 psi. As a result, during the summer California refiners currently must meet an RVP standard of 6.6 psi minimum (a federal standard) and 7.0 psi maximum (a California standard). You have requested that EPA change the minimum RVP standard for RFG to 6.4 psi in California. In addition, the American Automobile Manufacturers Association has indicated in a letter to EPA that they agree to this change in the case of California gasoline.

EPA believes changing the minimum RVP standard for RFG in California to 6.4 psi is appropriate, and in the very near future intends to implement this change to the RFG standards through rulemaking. Therefore, for a limited time period, EPA will forego enforcement of the 6.6 psi minimum RVP standard for RFG under 40 CFR § 80.42(c)(1) in California, provided the gasoline has an RVP equal to or greater than 6.4 psi.

Enforcement of the RFG requirements in this manner will expire at the conclusion of the rulemaking to change the federal RVP standard in California, which EPA intends to complete by May 1, 1996, at which time the requirements will be enforced as promulgated.

Production of Certain California Gasoline That Does Not Meet the Federal RFG Standard for Oxygen

Section 211(k) of the Clean Air Act requires that the RFG standard for 2.0 weight percent (wt%) oxygen must be met in each covered area. When EPA promulgated the 40 CFR § 80.81 California

exemptions, the statewide standards for California Phase 2 gasoline would have been equal to or more stringent than the standards for federal RFG. With regard to oxygen, the California Phase 2 standards included a statewide flat limit of 1.8 to 2.2 wt% oxygen that was considered, in practice, to be equivalent to the federal 2.0 wt% standard. As a result, there was no need to distinguish between California Phase 2 gasoline used in the federally covered areas and California Phase 2 gasoline used in other markets in California, in order to have certainty that RFG standards would be met in each federally covered area in California.

The final California Phase 2 requirements were changed, however, and now allow gasoline that does not meet the federal RFG standard for oxygen. Specifically, under two alternative certification methods there is no minimum oxygen content requirement for California Phase 2 gasoline. However, under 40 CFR § 80.81(e)(2), if a California refiner uses an alternative certification method they must demonstrate to EPA that their gasoline still meets all RFG per-gallon standards, or the enforcement exemption is withdrawn. Therefore, 40 CFR § 80.81, in effect, requires that all California Phase 2 gasoline must meet the federal RFG standards in order to retain the enforcement exemptions. As a result, you have asked EPA to modify its requirements in order to allow California refiners to supply California Phase 2 gasoline containing less than 2.0 wt% oxygen to markets other than the federally covered areas.

EPA believes it is appropriate to modify 40 CFR § 80.81 as you have requested, provided that requirements are implemented that would ensure compliance with the federal oxygen standard for RFG in each covered area in California. EPA further believes that these requirements could consist of annual gasoline quality surveys for oxygen content in each California covered area. EPA reached these conclusions because the California Phase 2 standards, with the exception of oxygen, are more stringent than the standards for federal RFG, including any gasoline formulation certified using the California predictive model. In addition, these standards will be appropriately enforced by CARB. EPA also concludes there is no public health or environmental risk from the changed oxygen requirements in non-federally covered areas.

Therefore, EPA intends to initiate a rulemaking to modify 40 CFR § 80.81 to allow refiners to produce California Phase 2 gasoline containing less than 2.0 wt% oxygen for use outside the federally covered areas provided appropriate annual gasoline quality surveys for oxygen are conducted in each covered area in California. Further, these surveys must show an average oxygen content in each covered area of at least 2.0 wt%.

In addition, for a limited time and under certain conditions, EPA will allow California refiners to produce gasoline that contains less than 2.0 wt% oxygen for use outside the federally covered areas. In particular, EPA will not enforce the requirement at 40 CFR § 80.81(e)(2) that California refiners must demonstrate that federal RFG per-gallon standards are met on each occasion California Phase 2 gasoline is certified under Title 13, California Code of Regulations, section 2265 (dealing with gasoline certification based on the California predictive model), provided that the following conditions are met:

(1) A program of gasoline quality surveys must be conducted in each RFG covered area in California each year to monitor annual average oxygen content; and

(2) The surveys must be conducted in accordance with each requirement specified under 40 CFR §§ 80.68(b) and (c), dealing with surveys for RFG quality, and 40 CFR §§ 80.41(o) through (r), dealing with the effects of survey failures, with the following exceptions:

(a) The surveys must evaluate for oxygen content, and evaluation for other gasoline parameters is optional;

(b) A minimum of four surveys (a survey series) must be conducted in each covered area each

calendar year, except that the first survey series must be conducted during the period June, 1996 through May, 1997, and the surveys conducted during the period January through May, 1997 also will be included in the 1997 calendar year survey series;

(c) For 1996 only, the survey program plan under 40 CFR § 80.68(c)(15) must be submitted to EPA no later than May 1, 1996, and the contract with the survey contractor must be in place and the funds must be paid to the contractor or placed into escrow, under 40 CFR § 80.68(c)(16), by June 1, 1996.

Enforcement of the RFG requirements in this manner will expire at the conclusion of the rulemaking to modify 40 CFR § 80.81 with regard to gasoline containing less than 2.0 wt% oxygen and to implement an oxygen gasoline quality survey requirement in California. EPA intends to complete this rulemaking by September 1, 1997, at which time the requirements will be enforced as promulgated.

It is important to note that California Phase 2 gasoline that does not meet the RFG standards, including the oxygen standard, is classified as conventional gasoline. In addition, the flexibility allowed in this letter does not alter the prohibitions under section 211(k)(5) of the Clean Air Act, and 40 CFR § 80.78(a)(1), against selling or dispensing conventional gasoline to ultimate consumers in covered areas, and against selling conventional gasoline for resale in covered areas unless the gasoline is segregated and marked as "conventional gasoline, not for sale to ultimate consumers in a covered area."

If you have questions, you may call Janet Bearden, Acting Director, Air Enforcement Division, Office of Regulatory Enforcement, at 202-564-2260.

Sincerely,
/s/
Steven A. Herman
Assistant Administrator

K. ATTEST ENGAGEMENTS

1. **Question:** What is the affect of a "clean" attestation and/or regulatory audit on subsequent compliance violations identified?

Answer: An attestation engagement report for the refinery or importer that indicates no discrepancies has no bearing on a violation by the refiner or importer that may be determined by EPA.

With regard to the CPA or CIA who conducted the attestation engagement, any contradiction between an attest engagement report showing no discrepancies by a refiner or importer and a subsequently determined actual violation by that refiner or importer would prompt an inquiry by EPA into the basis for the contradiction. If the violation reasonably should not have triggered a discrepancy notation in the attest report, the matter would be considered closed. If the violation was such that the attester should have discovered and noted a discrepancy, EPA could raise questions about the quality of the attest engagement, that under certain situations could lead to a action by EPA to debar the attester. An attester found to have intentionally submitted a false report to EPA would potentially be subject to the criminal penalties applicable to any party who intentionally submits a false report to the government.^(7/1/94)

2. **Question:** Confirm that the attester will designate what is required to turn over a tank from one service to another, and how the barrels should be counted; i.e., from RBOB to conventional, or 3.5 wt% RBOB to 2.7 wt% RBOB.

Answer: The attester will not designate products for the party subject to the attestation

engagement requirement. The function of the attestation engagement is to provide an independent analysis of the designations made by the regulated party. The designation of gasolines and RBOB occurs when product has been produced and shipped by a refiner. The attestation engagement is a year-end review of the production and marketing records of the regulated party, after decisions pertaining to product designations have been made.^(7/1/94)

3. **Question:** What basis is to be used for reconciliations, volume (gallons or barrels) or weight? What does EPA consider to be perpetual inventory? (Is a plant balancing considered a perpetual inventory?)

Answer: Section 80.128 (Agreed upon procedures for refiners and importers) provides for comparison of records on the basis of volume except in section 80.128(b) which provides for analysis of gasoline inventory reconciliation records. While EPA anticipates that the standard practice is to keep gasoline inventory records on a volume basis, it is conceivable that a company could maintain such records on the basis of weight. Where a company has maintained its gasoline inventory reconciliation analysis and its perpetual inventory on a weight basis that is susceptible to analysis by an attester, that basis would be acceptable to EPA for purposes of section 80.128(b).

Section 80.128(b) refers to a company's "perpetual inventory." EPA intended that this term refer to a company's regular method of keeping a running record of gasoline production and distribution volumes. In most cases, EPA believes that the industry standard practice is to keep a daily record of inventory. To the extent that a "plant balancing" would represent the most stringent customary recordkeeping practiced by a company, the "balancing" may be acceptable to EPA as a perpetual inventory. A company with specific questions with respect to this issue may contact EPA for case-by-case guidance.^(7/1/94)

4. **Question:** Will internal auditors be able to perform the attestation audits under the direct supervision of an independent CPA firm? Can the internal audit department meet the attestation requirement using CPAs rather than CIAs?

Answer: Section 80.125(c) provides that an independent CPA (or firm of CPAs) engaged by a refiner, importer or oxygenate blender may complete the attest engagement requirements with the assistance of internal auditors so long as such assistance is in accordance with the Statement on Standards for Attestation Engagements. The Statement provides explicit professional standards for a CPA to be able to attest to the accuracy of records underlying an attestation engagement, including a standard pertaining to independence of mental attitude in performing an engagement. Accordingly, an independent CPA (or firm of CPAs) may be assisted by a company's internal auditors, but the independent CPA (or firm of CPAs) is ultimately responsible for complying with the Statement and for the representation made in the Attestation Reports required under § 80.130.

Section 80.125(a) requires that CPAs (or firms of CPAs) be independent of the company subject to the attestation engagement. However, company employees who are certified by the Institute of Internal Auditors as Certified Internal Auditors and who are also licensed CPAs, may perform attestation engagements.^(7/1/94)

5. **Question:** What is meant by "a simple random sample" in Regulation §80.127(a)? May the sampling be done quarterly?

Answer: The term simple random sample can mean that every combination of selected items has an equal chance of selection. However, that definition is impractical because, in general, it would require the attestation sample selection to begin only at the conclusion of the annual averaging period when the entire population is known. In consequence, EPA will allow judgmental selection of reasonably representative "random sampling" whereby every item in the population has a reasonably equal chance of

selection.

Further, EPA encourages, but does not require, early and timely performance of the attestation. Therefore, EPA will not object to the sample being stratified by time whereby about a fourth of the sample may be selected from each of the first three quarters' activity, with reasonable allowance for differences in activity levels of the four quarters.

For example, if the annual population of RFG tenders is reasonably expected to exceed 65 for the 1996 reporting period, the expected sample size under Option 1 of §80.127(b) is 29 tenders. If each quarter's tender activity level were expected to be about the same, in April 1996 the CPA could take a sample of seven items from the first quarter's tenders and perform the attest procedures for those items at that time. The CPA might then take six items from the second quarter and six items from the third quarter and perform the attest procedures for those items later in 1996. In early 1997, the CPA would identify the portion of 1996 tenders attributable to each quarter and select the remaining ten items from the four quarters so as to stratify the sample by time, yet give consideration to the portion of the population in each quarter. In that way the CPA would have randomly sampled by quarter such that each tender would have a reasonably equal chance of selection. The CPA would still issue only one attestation report for the facility which the CPA's client would send to EPA by May 31, 1997. (4/18/95)

[NOTE: The following letter was sent on March 15, 1996.]

Ian A. MacKay, CPA
Director
Federal Government Division
American Institute of Certified Public Accountants
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

Re: Alternative Attest Procedures

Dear Mr. MacKay:

Thank you for your January 11, 1996 letter in which you seek EPA approval for alternative attest procedures for use in conjunction with the reformulated gasoline and anti-dumping programs.

As you know, refiners, importers and many oxygenate blenders are required to commission annual attest engagements to review compliance with various aspects of the reformulated gasoline and anti-dumping programs. The minimum attest procedures are specified under 40 CFR Part 80, subpart F. In addition, the chapeau of 40 CFR § 80.128 provides that alternative attest procedures may be used provided that prior approval is obtained from EPA.

As a result of subsequent discussions, Mr. Stephen Chase, of the AICPA's Gasoline Attestation Task Force, has modified the alternative attest procedures for which you are seeking approval to those enclosed with this letter. EPA hereby approves use of the enclosed attest procedures. In particular, ¶ 2 (Agreed-upon procedures for refiners and importers) and ¶ 3 (Agreed-upon procedures for downstream oxygenate blenders) of the enclosed attest procedures may be used as alternatives to 40 CFR §§ 80.128 and 129, respectively. Moreover, ¶ 1 (Definitions) of the enclosed attest procedures may be used in conjunction with the these alternative attest procedures.

An auditor has the option of using either the 40 CFR § 80.128 attest procedures in their entirety, or the ¶ 2 alternative attest procedures in their entirety; and either the 40 CFR § 80.129 attest procedures in their entirety, or the ¶ 3 alternative attest procedures in their entirety. For either section, an auditor may

not use a combination of the original attest procedures and the alternative attest procedures. In addition, alternative attest procedures are not being approved for portions of 40 CFR Part 80, subpart F, other than 40 CFR §§ 80.128 and 129.

Thank you for your efforts, and for those of the members of the AICPA's Gasoline Attestation Task Force, to develop alternative attest procedures.

If you have questions, you may call Fielding Lamason, at 202-564-1024.

Yours truly,

/s/

George Lawrence
Reformulated Gasoline Team Leader

¶ 1 Definitions.

The following definitions apply for the purposes of these alternative attest procedures:

(a) *Attestor* means the CPA or CIA performing the agreed-upon procedures engagement under this subpart.

(b) *EPA Reports or Company Documents* may refer to copies of such documents provided to the attestor.

(c) *Foot (or crossfoot)* is an attestation term that means to add a series of numbers, generally in columns (or rows), to a total amount. When applying the attestation procedures in this subpart F, the attestor may foot to subtotals on a sample basis in those instances where subtotals (e.g., page totals) exist. In such instances, the total should be footed from the subtotals and the subtotals should be footed on a test basis using no less than 25% of the subtotals.

(d) *GTAB* (gasoline-treated-as-blendstock) refers to imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes GTAB in its refinery compliance calculations.

(e) *Laboratory Analysis* means the summary of the analysis that was used to determine a product's properties. For laboratories using test methods that must be correlated to the standard test method, the correlation factors and results should be included. For refineries or importers that produce RFG or RBOB and use the 100% independent lab testing, the laboratory analysis shall consist of the results reported to the refinery or importer by the independent lab. Where assumed properties are used (e.g., for butane) the assumed properties may serve as the test results.

(f) *Non-finished-gasoline petroleum products* for attestation purposes is defined as liquid petroleum products that have boiling ranges greater than 75 degrees Fahrenheit, but less than 450 degrees Fahrenheit, as per ASTM D86 or equivalent.

(g) *Product Transfer Document(s)* means copy(ies) of document(s): (1) represented by the refiner/importer/oxygenate blender as having been provided to the transferee, and (2) that reflect the transfer of ownership or physical custody of gasoline or blendstock (e.g., invoices, receipts, bills of lading, manifests, and/or pipeline tickets).

(h) *Reporting Period* means the time period relating to the reports filed with EPA by the refiner, importer, or oxygenate blender as noted in ¶ 2(a)(1) and ¶ 3(a), and generally is the calendar year. The 1995 Reporting Period includes 1994 activity reported for the first quarter of 1995 as required by 40 CFR §80.75(a)(3).

(i) *Tender* means the transfer of ownership of a volume of gasoline or other petroleum product all of which has the same identification (reformulated gasoline, conventional gasoline, RBOB, and other non-finished-gasoline petroleum products), and characteristics (time and place of use restrictions for reformulated gasoline and RBOB).

¶ 2 Agreed-upon procedures for refiners and importers.

The following minimum procedures may be carried out for a refinery and importer that is subject to the requirements of 40 CFR Part 80, subpart F, as an alternative to the procedures under 40 CFR §80.128.

(a) *EPA Reports.*

- (1) Obtain and read a copy of the refinery's or importer's reports (except for batch reports) filed with the EPA as required by 40 CFR §§80.75 and 80.105 for the Reporting Period.
- (2) In the case of a refiner's report to EPA that represents aggregate calculations for more than one refinery (i.e., more than one facility is listed in section 2.0 of an Anti-Dumping Program Annual Report, or in section 2.0 of a Reformulated Gasoline Sulfur, Olefin and T90 Averaging Report), obtain the refinery-specific volume and property information that was used by the refiner to prepare the aggregate report. Foot and crossfoot the refinery-specific totals and compare to the values in the aggregate report. The procedures in ¶¶ 2(b) through 2(m) then are performed separately for each refinery.
- (3) Obtain a written representation from a company representative that the report copies are complete and accurate copies of the reports filed with the EPA.

(b) *Inventory reconciliation analysis.* Obtain an inventory reconciliation analysis for the refinery or importer for the Reporting Period by product type (i.e., reformulated gasoline, RBOB, conventional gasoline, and non-finished-gasoline petroleum products), and perform the following:

- (1) Foot and crossfoot the volume totals reflected in the analysis; and
- (2) Compare the beginning and ending inventory amounts in the analysis to the refinery's or importer's inventory records.

Note: *If the analysis shows no production of conventional gasoline or if the refinery or importer represents per ¶ 2(l) that it has a baseline less stringent or equal to the statutory baseline, the analysis may exclude non-finished-gasoline petroleum products.*

(c) *Listing of tenders.* For each product type other than non-finished gasoline petroleum products (i.e., reformulated gasoline, RBOB, conventional gasoline), obtain a separate listing of all tenders from the refinery or importer for the Reporting Period. Each listing should provide for each tender the volume shipped and other information as needed to distinguish tenders. Perform the following:

- (1) Foot to the volume totals per the listings; and
- (2) For each product type listed in the inventory reconciliation analysis obtained in ¶ 2(b), compare the volume total on the listing to the tender volume total in the inventory reconciliation analysis.

(d) *Listing of batches.* For each product type other than non-finished gasoline petroleum products (i.e., reformulated gasoline, RBOB, and conventional gasoline), obtain separate listings of all batches reported to the EPA and perform the following:

- (1) Foot to the volume totals per the listings; and
- (2) Compare the total volumes in the listings to the production volume in the inventory reconciliation analysis obtained in ¶ 2(b).

(e) *Reformulated gasoline tenders.* Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of reformulated gasoline tenders obtained in ¶ 2(c), and for each tender selected perform the following:

- (1) Obtain Product Transfer Document(s) associated with the tender and compare the volume on the tender listing to the volume on the Product Transfer Document(s); and

- (2) Inspect the Product Transfer Document(s) evidencing the date and location of the tender and the compliance model designations for the tender (VOC-controlled [Region 1 or 2], non VOC-controlled, OPRG, non-OPRG, and simple or complex model certified).

(f) *Reformulated gasoline batches*. Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of reformulated gasoline batches obtained in ¶ 2(d), and for each batch selected perform the following:

- (1) Compare the volume shown on the listing, to the volume listed in section 3.0 of the corresponding batch report submitted to EPA; and
- (2) Obtain the refinery's or importer's Laboratory Analysis and compare the properties listed in section 8.0 of the corresponding batch report submitted to EPA, to the properties listed in the Laboratory Analysis.

(g) *RBOB tenders*. Select a sample, in accordance with the guidelines 40 CFR §80.127, from the listing of RBOB tenders obtained in ¶ 2(c), and for each tender selected perform the following:

- (1) Obtain Product Transfer Document(s) associated with the tender and compare the volume on the tender listing to the volume on the Product Transfer Document(s); and
- (2) Inspect the Product Transfer Document(s) evidencing the type and amount of oxygenate to be added to the RBOB.

(h) *RBOB batches*. Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of RBOB batches obtained in ¶ 2(d), and for each batch selected perform the following:

- (1) Obtain from the refiner or importer the oxygenate type and volume, and oxygen volume required to be hand blended with the RBOB, in accordance with 40 CFR §§80.69(a)(2) and (8);
- (2) Compare the volume shown on the listing, as adjusted to reflect the oxygenate volume determined under ¶ 2 (h)(1), to the volume listed in section 3.0 the corresponding batch report submitted to EPA; and
- (3) Obtain the refinery's or importer's Laboratory Analysis of the RBOB hand blend and compare the oxygenate type and oxygen amount determined under ¶ 2(h)(1), to the tested oxygenate type and oxygen amount listed in the Laboratory Analysis; and compare the properties listed in section 8.0 of the corresponding batch report submitted to EPA, to the properties listed in the Laboratory Analysis.
- (4) Categorize the RBOB Batch reports into two groups: (1) Group 1 - RBOB Batch reports showing (a) "RBOB-any oxygenate" with ethanol as oxygenate and an oxygen content of 2.0 weight percent, (b) "RBOB-ethers only" with only MTBE as oxygenate and an oxygen content of 2.0 weight percent, or (c) 4.0 volume percent ethanol and no other oxygenate, and (2) Group 2 - all other RBOB Batch reports. Perform the following procedures for each Batch report categorized in Group 2 (all others). [No additional procedures need to be performed for RBOB Batch reports categorized in Group 1.]
 - (i) Obtain and inspect a copy of an executed contract with the downstream oxygenate blender (or with an intermediate owner) evidencing that the contract: (1) was in effect at the time of the corresponding RBOB transfer, and (2) allowed the company to sample and test the RFG made by the blender.

(ii) Obtain a listing of RBOB blended by downstream oxygenate blenders and the refinery's or importer's oversight test results, and select a representative sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of test results and for each test selected perform the following:

- (A) Obtain the Laboratory Analysis for the batch, and compare the type of oxygenate used and the oxygen content appearing in the Laboratory Analysis to the instructions stated on the Product Transfer Document(s) corresponding to a RBOB receipt immediately preceding the Laboratory Analysis and used in producing the RFG batch selected;
- (B) Calculate the frequency or amount of the volume blended between the test selected and the next test; and
- (C) Compare the frequency or volume blended between the test selected and the next test to the sampling and testing frequency rates stated in 40 CFR §80.69(a)(7).

(i) *Conventional gasoline and conventional gasoline blendstock tenders.* Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of the tenders of conventional gasoline and conventional gasoline blendstock that becomes gasoline through the addition of oxygenate only, and for each tender selected perform the following:

- (1) Obtain Product Transfer Document(s) associated with the tender and compare the volume on the tender listing to the volume on the Product Transfer Document(s); and
- (2) Inspect the Product Transfer Document(s) evidencing that the information required in 40 CFR §80.106(a)(1)(vii) is included.

(j) *Conventional gasoline batches.* Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the conventional gasoline batch listing obtained in ¶ 2(d), and for each batch selected perform the following:

- (1) Compare the volume shown on the listing, to the volume listed in section 3.0 of the corresponding batch report submitted to EPA; and
- (2) Obtain the refinery's or importer's Laboratory Analysis and compare the properties listed in section 8.0 of the corresponding batch report submitted to EPA, to the properties listed in the Laboratory Analysis.

(k) *Conventional gasoline oxygenate blending.* Obtain either (1) a written representation from the refiner for the refinery or importer that it has not used any downstream oxygenate blending in its conventional gasoline compliance calculations, or (2) a listing of each downstream oxygenate blending facility and its blender, as represented by the refiner/importer, as adding oxygenate used in the compliance calculations for the refinery or importer.

- (1) For each downstream oxygenate blender facility, obtain a listing from the refiner or importer of the batches of oxygenate included in its compliance calculations added by the downstream oxygenate blender and foot to the total volume of batches per the listing;
- (2) Obtain a listing from the downstream oxygenate blender of the oxygenate blended with conventional gasoline or sub-octane blendstock that was produced or imported by the refinery

or importer and perform the following:

- (i) Foot to the total volume of the oxygenate batches per the listing; and
 - (ii) Compare the total volumes in the listing obtained from the downstream oxygenate blender, to the listing obtained from the refiner or importer in ¶ 2(k)(1).
- (3) Where the downstream oxygenate blender is a person other than the refiner or importer, as represented by management of the refinery or importer, perform the following:
- (i) Obtain the contract from the refiner or importer with the downstream blender and inspect the contract evidencing that it covered the period when oxygenate was blended;
 - (ii) Obtain company documents evidencing that the refiner or importer has records reflecting that it conducted physical inspections of the downstream blending operation during the period oxygenate was blended;
 - (iii) Obtain company documents reflecting the refiner or importer audit over the downstream oxygenate blending operation and inspect these records evidencing the audit included a review of the overall volumes and type of oxygenate purchased and used by the oxygenate blender to be consistent with the oxygenate claimed by the refiner or importer, and that this oxygenate was blended with the refinery's or importer's gasoline or blending stock; and
 - (iv) Obtain a listing of test results for the sampling and testing conducted by the refiner or importer over the downstream oxygenate blending operation, and select a sample, in accordance with the guidelines in 40 CFR §80.127, from this listing. For each test selected, compare the tested oxygenate volume with the oxygenate volume in the listing obtained from the oxygenate blender in ¶ 2(k)(2) for this gasoline.

(l) *Blendstock tracking.* Either: obtain a written representation from management of the refinery or importer that it has a baseline for each property that is less stringent or equal to the statutory baseline (i.e., it is exempt from blendstock tracking under 40 CFR §80.102(f)(1)(i)); or (2) perform the following procedures:

- (1) Obtain listings for those tenders of non-finished-gasoline petroleum products classified by the refiner or importer as:
 - (i) Applicable blendstock which is included in the refinery's or importer's blendstock tracking calculations pursuant to 40 CFR §§80.102(b) through (d);
 - (ii) Applicable blendstock which is exempt pursuant to 40 CFR §80.102(d)(3) from inclusion in the refinery's or importer's blendstock tracking calculations pursuant to 40 CFR §§80.102(b) through (d); and
 - (iii) All other non-finished-gasoline petroleum products;
- (2) Foot to the totals of the tender volumes contained in the listings obtained from the refinery or importer in ¶ 2(l)(1);
- (3) Compare the total volume of tenders per the listings to the total tender volume of non-finished-gasoline products on the gasoline inventory reconciliation analysis obtained in ¶ 2(b); and

- (4) Compute and report as a finding the refinery's or importer's ratio of all non-finished petroleum products to total gasoline production. [Total gasoline production is the volume total of the batches from ¶ 2(d) for RFG, RBOB, and conventional gasoline, exclusive of California gasoline.]

Note: No further procedures must be performed under ¶ 2(l) if: (1) the ratio in ¶ 2(l)(4) is less than or equal to 3%, and (2) the refiner represents in writing that blendstock accounting is not required under 40 CFR §80.102(g). Otherwise:

- (5) Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the tender listing obtained in ¶ 2(l)(1)(ii), and for each tender selected perform the following:
 - (i) Obtain the refinery's or importer's company documents that evidence the transfer of the product to another party and compare the volumes contained in these records to the listing of tenders; and
 - (ii) Obtain documents from the refinery or importer that support the exclusion of the applicable blendstock from the blendstock-to-gasoline ratio, and agree that the documented purpose is one of those specified at 40 CFR §80.102(d)(3);
- (6) Compare the total tender volume obtained in ¶ 2(l)(1)(ii) to the "total volume of applicable blendstock produced or imported, transferred to others and excluded from blendstock ratio calculations" listed in section 3.3 of the Anti-Dumping Program Annual Report copy received pursuant to ¶ 2(a)(1), or to the refinery-specific volume under ¶ 2(a)(2) used to prepare an aggregate report submitted to EPA.
- (7) Compute and report as a finding the refinery's ratio of applicable blendstocks included in the tracking calculation (¶ 2(l)(1)(i)) plus all other non-finished-gasoline petroleum products (¶ 2(l)(1)(iii)), to total gasoline production. [Total gasoline production is the volume total of the batches from ¶ 2(d) for RFG, RBOB, and conventional gasoline, exclusive of California gasoline.]

Note: No further procedures must be performed under ¶ 2(l) if: (1) the ratio in ¶ 2(l)(7) is less than or equal to 3%, (2) no exceptions were noted in ¶ 2(l)(5), and (3) the refiner represents in writing that blendstock accounting is not required under 40 CFR §80.102(g) then. Otherwise:

- (8) Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing obtained in ¶ 2(l)(1)(iii), and for each tender selected perform the following:
 - (i) Obtain the records that evidence the transfer of the product to another party and compare the volume contained in these records to the volume on the listing of tenders; and
 - (ii) Inspect the product type assigned by the refiner or importer on the transfer document (i.e., alkylate, raffinate, etc.) and agree that this product type is excluded from the applicable blendstock list at 40 CFR §80.102(a).
- (9) Compare the total tender volume obtained in ¶ 2(l)(1)(i) to the "total volume of applicable blendstock produced or imported, transferred to others and included in blendstock ratio calculations" listed in section 3.2 of the Anti-Dumping Program Annual Report copy received pursuant to ¶ 2(a)(1), or to the refinery-specific volume under ¶ 2(a)(2) used to prepare an aggregate report submitted to EPA.

- (10) Compute and report as a finding the refinery's ratio of applicable blendstocks included in the tracking calculation (§ 2(l)(1)(i)) to total gasoline production. [Total gasoline production is the volume total of the batches from § 2(d) for RFG, RBOB, and conventional gasoline, exclusive of California gasoline.]

Note: No further procedures must be performed under § 2(l) if: (1) the ratio in § 2(l)(10) is less than or equal to 3%, and (2) the refiner represents in writing that blendstock accounting is not required under 40 CFR §80.102(g). Otherwise:

- (11) Obtain the refinery's or importer's blendstock-to-gasoline ratios for calendar years 1990 through 1993.
- (12)
 - (i) In the case of averaging periods prior to 1998, compute and report as a finding the peak year blendstock-to-gasoline ratio percentage change as required under 40 CFR §102(d)(1)(ii); or
 - (ii) In the case of averaging periods beginning in 1998, compute and report as a finding the running cumulative compliance period blendstock-to-gasoline ratio as required under 40 CFR §80.102(d)(2)(i), and the cumulative blendstock-to-gasoline ratio percentage change as required under 40 CFR §80.102(d)(2)(ii).
- (13) Obtain from the refiner or importer the prior year's peak year blendstock-to-gasoline ratio percentage change (if the prior year was prior to 1998), or running cumulative compliance period blendstock-to-gasoline ratio (if the prior year was 1998 or later).

Note: No procedures must be performed under § 2(m) if: (1) for the prior year the peak year blendstock-to-gasoline ratio percentage change (for 1995 through 1997), or the cumulative blendstock-to-gasoline ratio percentage change (for 1998 and after), is less than ten; and (2) the refiner represents in writing that blendstock accounting is not required under 40 CFR §80.102(g); otherwise proceed to Blendstock Accounting, § 2(m):

(m) Blendstock accounting.

- (1) Obtain listings for those tenders of non-finished-gasoline petroleum products tenders classified by the refinery or importer as:
 - (i) Blendstock which is included in the compliance calculations for the refinery or importer; and
 - (ii) All other non-finished-gasoline petroleum products;
- (2) Foot the total volume of tenders per the listings;
- (3) Compare the total volume of tenders per the listings to the gasoline inventory reconciliation analysis obtained in § 2(b);
- (4) Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of blendstock tenders which are included in the compliance calculations for the refinery or importer, and for each tender selected perform the following:
 - (i) Compare the volumes to company documents evidencing the transfer of the tender to another party;

- (ii) Note the Product Transfer Document(s) includes the statement indicating the blendstock has been accounted-for, and may not be included in another party's compliance calculations; and
- (5) Compare the total tender volume obtained in ¶ 2(m)(1)(i) to the "total volume of blendstocks included in compliance calculations" listed in section 3.4 of the Anti-Dumping Program Annual Report copy received pursuant to ¶ 2(a)(1), or to the refinery-specific volume under ¶ 2(a)(2) used to prepare an aggregate report submitted to EPA.
- (6) Select a sample, in accordance with the guidelines in 40 CFR §80.127, from the listing of tenders of non-finished-gasoline petroleum products that are excluded from the refinery's or importer's compliance calculations, and for each tender selected confirm that company documents demonstrate that the petroleum products were used for a purpose other than the production of gasoline within the United States.

¶ 3 Agreed-upon procedures for downstream oxygenate blenders.

The following minimum procedures may be carried out for an oxygenate blending facility that is subject to the requirements of 40 CFR Part 80, subpart F, as an alternative to the procedures under 40 CFR §80.129.

(a) *EPA Blender Reports.* Obtain and read a copy of the blender's reports (except for Batch reports) filed with the EPA as required by 40 CFR §80.75 for the Reporting Period. Obtain a written representation from a company representative that the copies are complete and accurate copies of the reports filed with the EPA.

(b) *Inventory reconciliation analysis.* Obtain from the blender an inventory reconciliation analysis for the Reporting Period that summarizes: (1) RBOB, RFG, and oxygenate receipts, (2) RBOB, RFG, and oxygenate beginning and ending inventories, (3) RFG production, and (4) RBOB and RFG tenders, and perform the following:

- (1) Foot and the crossfoot volume totals reflected in the analysis; and
- (2) Compare the beginning and ending inventory amounts in the analysis to the blender's inventory records.

(c) *RBOB receipts.* Obtain a listing of all RBOB receipts for the Reporting Period, and perform the following:

- (1) Foot to the total volume of RBOB receipts per the listing;
- (2) Compare the total RBOB receipts volume reflected on the listing to the RBOB receipts volume on the inventory reconciliation analysis;
- (3) Select a sample, in accordance with the guidelines in 40 CFR §80.127, of RBOB receipts from the listing. For each selected RBOB receipt, obtain product transfer document(s) specifying the type and volume of oxygenate to be added to the RBOB.

(d) *Oxygenate receipts.* Obtain a listing of all oxygenate receipts for the Reporting Period, and perform the following:

- (1) Foot to the total volume of oxygenate receipts per the listing;
- (2) Compare the total oxygenate receipts volume reflected on the listing to the oxygenate receipts volume on the inventory reconciliation analysis.

(e) *RFG Tenders*. Obtain a listing of all RFG tenders for the Reporting Period, and perform the following:

- (1) Foot to the total RFG tenders per the listing;
- (2) Compare the total RFG tenders volume reflected on the listing to the RFG tenders volume on the inventory reconciliation analysis;
- (3) Select a sample, in accordance with the guidelines in 40 CFR §80.127, of RFG tenders from the listing, and for each tender selected perform the following:
 - (i) Obtain the Product Transfer Document(s) associated with the tender and compare the volume on the tender listing to the volume on the Product Transfer Document(s).
 - (ii) Inspect the Product Transfer Document(s) evidencing the date and location of the tender and the compliance model designations for the tender (VOC-controlled [Region 1 or 2], non VOC-controlled, OPRG, non-OPRG, and simple or complex model certified).

(f) *RBOB tenders*. Obtain a listing of all RBOB tenders during the Reporting Period, and perform the following:

- (1) Foot to the total volume of RBOB per the listing;
- (2) Compare the total RBOB tenders volume reflected on the listing to the RBOB tenders volume on the inventory reconciliation analysis.

(g) *RFG batches*. Obtain a listing of all RFG batches produced during the Reporting Period, and perform the following:

- (1) Foot to the total volume of RFG batches produced per the listing;
- (2) Compare the total RFG batch volume reflected on the listing to the RFG batch volume on the inventory reconciliation analysis.

(h) *Blenders sampling and testing batches*. For blenders that meet the oxygenate blending requirements by sampling and testing each batch of RFG, select a sample, in accordance with the guidelines in 40 CFR §80.127, of RFG batches from the listing obtained in ¶ 3(g), and for each batch selected perform the following:

- (1) Obtain the internal Laboratory Analysis for the batch, and compare the type of oxygenate used and the oxygen content appearing in the Laboratory Analysis to the instructions stated on the Product Transfer Document(s) corresponding to a RBOB receipt immediately preceding the Laboratory Analysis and used in producing the RFG batch selected.
- (2) Compare the oxygen content results of the Laboratory Analysis to the corresponding batch information reported to EPA.

(i) *Blenders not sampling and testing each batch.* For blenders that are NOT sampling and testing each batch of RFG, perform the following:

- (1) Obtain a listing of the monthly (or lesser period if used by the blender) oxygen compliance calculations, and
 - (i) Foot the RBOB and oxygenate volumes used in the individual compliance calculations; and
 - (ii) Compare the totals to the corresponding volumes on the inventory reconciliation analysis.
- (2) Select a sample, in accordance with the guidelines in 40 CFR §80.127, of RFG batches on the listing obtained in ¶ 3(g), and for each batch selected perform the following:
 - (i) Compare the oxygen content information shown on the listing to the oxygen content reflected in the corresponding oxygen compliance calculation; and
 - (ii) Obtain a written representation from a company representative as to whether the oxygenate blender is basing the calculation on the assumptions for specific gravity and denaturant content (if ethanol is used), or on measured values. If the blender is using measured values, obtain the blender's test results for specific gravity and denaturant content for the RBOB and oxygenate used, and compare the test results to the compliance calculations. If the blender is using the assumed values for specific gravity and denaturant content, compare the values used in the compliance calculation to the values specified by EPA.
- (3) Obtain a listing of reformulated gasoline samples tested in connection with the blenders quality assurance program, and:
 - (i) Select a sample, in accordance with the guidelines in 40 CFR §80.127, of RFG samples from the list.
 - (ii) For each RFG sample selected, obtain the corresponding Laboratory Analysis and compare the oxygen content to the ranges specified by the EPA.
 - (iii) Based on the selected RFG sample's compliance with EPA oxygen content compliance, inspect the listing evidencing that the frequency of the next sample made in connection with the quality assurance program was within EPA specifications under 40 CFR §80.69(e)(2).

(j) *Blenders using assumed values.* For blenders that are using the assumed values for ethanol denaturant content in the oxygen compliance calculation, obtain a chronological list of the ethanol samples tested in connection with the blender's quality assurance program. The listing should show the sampling dates and test results as to the oxygenate purity level. Select a sample, in accordance with the guidelines in 40 CFR §80.127, of ethanol samples from the list and perform the following:

- (1) Obtain the Laboratory Analysis corresponding to the selection and compare the oxygenate purity level per the Laboratory Analysis to the level on the list; and
- (2) Based on the level of oxygenate purity, inspect the listing evidencing that the frequency of the next sample made in connection with the blender's quality assurance program was at least once a month if oxygenate purity equals or exceeds 92.1%; or at least once every two weeks if oxygenate purity is less than 92.1%, for any of the past four tests.

