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**RFG/Anti-Dumping
Questions and Answers
April 18, 1995**

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

RFG/ANTI-DUMPING QUESTIONS AND ANSWERS, APRIL 18, 1995

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through April 4, 1995, concerning the manner in which the EPA intends to implement and assure compliance with the reformulated gasoline and anti-dumping regulations at 40 CFR Part 80. This document was prepared by EPA's Office of Air and Radiation, Office of Mobile Sources, and Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Air Enforcement Division.

Regulated parties may use this document to aid in achieving compliance with the reformulated gasoline (RFG) and anti-dumping regulations. However, this document does not in any way alter the requirements of these regulations. While the answers provided in this document represent the Agency's interpretation and general plans for implementation of the regulations at this time, some of the responses may change as additional information becomes available or as the Agency further considers certain issues.

This guidance document does not establish or change legal rights or obligations. It does not establish binding rules or requirements and is not fully determinative of the issues addressed. Agency decisions in any particular case will be made applying the law and regulations on the basis of specific facts and actual action.

While we have attempted to include answers to all questions received by April 4, 1995, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document will be answered in a subsequent document. Questions that merely require a justification of the regulations, or that have previously been answered or discussed either in a previous Question and Answer document or the Preamble to the regulations have been omitted.

Topics Covered

Standards
RFG General Requirements
Independent Sampling and Testing
Compliance on Average
Reporting, Registration, Recordkeeping
Downstream Oxygen Blending
Attest Engagements
Anti-Dumping Requirements
Transition Issued

STANDARDS

[NOTE: This is an update to Question 1 of the Standards/Models section of the November 28, 1994 Question and Answer document.]

1. **Question:** Given EPA's stated intent in the preamble to the direct final rule of July 20, 1994, it is our interpretation of the RFG regulations that refiners may certify and release a non-VOC controlled RBOB designated for blending with 10 vol% ethanol ("gasohol waiver"), provided the refinery's certification sample does not exceed 4.0 wt% oxygen. Is our interpretation correct?

Answer: In the direct final rule EPA changed the maximum oxygen range for both the simple and complex model from 3.5 wt% to 4.0 wt% in order to accommodate 10 vol% ethanol blends within a range of specific gravities. As noted in the preamble to the direct final rule, density variations in gasoline blendstocks may result in variation in the oxygen content of an oxygenated fuel on a weight percent basis despite the fact that the volume percent remains fixed. See 59 FR 36947. The preamble goes on to state that, as an example, the oxygen content of a 10 volume % ethanol blend may be as low as 3.4 wt% and as high as 4.0 wt%.

Although the range in the models was changed, § 80.41(g) provides that the maximum oxygen content for simple model RFG is 3.5 wt% in the case of VOC-controlled RFG and 2.7 wt% in the case of non-VOC-controlled RFG. The direct final rule did not change these provisions and they remain in effect. However, EPA believes that the maximum oxygen content provisions for RFG should accommodate blended oxygenates that meet the applicable Clean Air Act section 211(f) "substantially similar" and waiver provisions. In consequence, EPA believes the oxygen maximums specified in § 80.41(g) should be adjusted to reflect the expected maximum oxygen content when RBOB is blended with 10 vol% ethanol in the case of non-VOC-controlled RFG and 7.7 vol% ethanol in the case of VOC-controlled RFG. These adjusted oxygen maximums are 4.0 wt% in the case of non-VOC-controlled RFG and 3.2 wt% in the case of VOC-controlled RFG. EPA intends to change the oxygen maximums specified in § 80.41(g) to reflect these adjustments in a future rulemaking. In the meantime, EPA will allow parties to use these adjusted oxygen maximums.

RFG GENERAL REQUIREMENTS

1. **Question:** Can a producer manufacturing only conventional gasoline purchase RFG, blend it with the conventional gasoline at the refinery, and use the combined blend volume and properties as part of the refinery's compliance calculations starting January 1, 1995?

Answer: Combining finished RFG and finished conventional gasoline is not an act of "producing or importing" under the RFG/anti-dumping regulations. Consequently, the resulting product would not be included in the refinery's compliance calculations. Under § 80.78(a)(10), however, such product may not be sold as RFG. Under § 80.78(a)(5), finished RFG may not be combined with a non-oxygenate blendstock unless the blendstock meets all RFG standards

without regard to the properties of the RFG to which the blendstock is added. However, a downstream party may downgrade RFG to conventional gasoline and combine it with blendstocks. In this case, the blendstocks would be included in the refinery's anti-dumping compliance calculations without regard to the volume and properties of the downgraded RFG.

2. **Question:** Can a party downstream of the refiner certify a batch of conventional gasoline as RFG if the required RFG standards are met after testing? If not, can this batch of conventional gasoline which meets RFG standards be sold to a refiner as a GTAB?

Answer: No. Only refiners and importers may designate gasoline as RFG. A downstream party also may not sell conventional gasoline as gasoline-treated-as-blendstock (GTAB) even if it meets RFG standards. The concept of GTAB applies only in the limited situation where the product is imported, is used by the company that imported it for blending gasoline in a refinery operated by the company, and is included in the company's refinery compliance calculations. Previously accounted for RFG or conventional gasoline may not be treated in this manner. For further discussion of GTAB, see the February 6, 1995 Question and Answer document.

3. **Question:** May a downstream party receiving non-OPRG RFG by the refiner/importer and which had an oxygen content of at least 2.0 weight % reclassify that RFG as OPRG and add additional oxygenate in the same manner and under the same restrictions as if the RFG had been received as OPRG so that it could be used in an OPRG area during an OPRG season?

Answer: Under § 80.78(a)(1)(iii) the gasoline used in oxygenated fuels areas during the oxygenated fuels control period must be designated as OPRG, and under § 80.65(d) this designation must be by the refiner or importer of the RFG. In consequence, downstream parties may not reclassify RFG from non-OPRG to OPRG by adding additional oxygenate. In addition, under § 80.78(a)(6) oxygenate may be added to RFG only in the case of RFG designated as OPRG that is intended for use in an oxygenated fuels area during the oxygenated fuels control period.

The practical reason for this constraint is that refiners and importers are required to meet the oxygen standard separately for the RFG used in cities not part of the oxygenated fuels program, in order to ensure these cities receive at least the 2.0 wt% oxygen required by the Clean Air Act. If RFG could be reclassified from non-OPRG to OPRG, the oxygen levels in the non-oxygenated fuels program cities would be placed in jeopardy.

4. **Question:** In the case of a refinery which is sold during the course of an annual averaging period (i.e., other than at midnight on December 31), how does EPA view the responsibilities of the seller refiner and the buyer refiner with regard to meeting the RFG and anti-dumping standards for the gasoline produced at that refinery?

Answer: Under § 80.65(c), each refiner of RFG is responsible for meeting the RFG standards for each batch of RFG produced by that refiner, and under § 80.67(b) in the case of RFG the refiner designates for compliance on average the refiner must meet the applicable RFG standards separately for the RFG produced by that refiner at each refinery over each calendar year averaging period. Under § 80.101 each refiner of conventional gasoline is responsible for meeting the anti-dumping standards for all conventional gasoline produced by that refiner at each refinery over each calendar year averaging period. In addition, each refiner is responsible for meeting all other refiner requirements for the gasoline produced at each refinery (sampling and testing, record keeping, reporting, etc.) and under § 80.65(h) each refiner is responsible for the completion of a compliance audit for the gasoline produced at each refinery during each calendar year.

In the case of a refinery that is sold during an averaging period, therefore, both the seller refiner and the buyer refiner would independently be responsible for meeting the applicable RFG and anti-dumping standards for the RFG and conventional gasoline produced at that refinery during the period that party owns the refinery, and for meeting all other refiner requirements for the gasoline produced. For example, if a refinery is sold on April 1, 1996, the seller refiner would be responsible for meeting the RFG and anti-dumping standards for the RFG and conventional gasoline produced at the refinery during the period January 1, 1996 through March 31, 1996, and the buyer refiner would be responsible for meeting the RFG and anti-dumping standards for the RFG and conventional gasoline produced at the refinery during the period April 1, 1996 through December 31, 1996. Each refiner also would be responsible for meeting all other refiner requirements for their periods of ownership, including sampling and testing, independent sampling and testing, record keeping, reporting, and attest engagements. This responsibility to meet RFG standards would apply regardless of whether the RFG produced by one refiner or the other is designated for meeting standards on average or on a per-gallon basis. Moreover, each refiner could designate the RFG produced during the period that party owns the refinery as meeting the RFG standards on average or on a per-gallon basis, and the buyer refiner could make an aggregation election for the refinery under § 80.101(h).

EPA recognizes there are seasonal differences in some RFG and anti-dumping standards calculations (e.g., the different toxics equations for summer versus winter) which, depending upon when a refinery is sold, could have an impact on either the seller or buyer refiner meeting these standards when met on average. As a result, in a case where a refinery is sold during an averaging period, and where either the seller or buyer refiner fails to meet an RFG or conventional gasoline standard which is met on average, EPA will evaluate the gasoline produced at the refinery by both the seller and the buyer refiner together. If this evaluation shows that the applicable RFG and conventional gasoline average standards have been met for all the gasoline produced at the refinery during the averaging period, EPA will treat both refiners as having met these standards, regardless of the separate compliance calculations of these parties. This collective evaluation would not be appropriate and would not be conducted, however, in a case where the standard in question is one that may be met by aggregating refineries (i.e., all anti-dumping standards, and in the case of RFG under the simple model, sulfur, T-90 and

olefins) and where the refiner who failed to meet the standard has elected to aggregate the refinery in question with other refineries.

EPA believes that the considerations discussed in this answer should be taken into account when a refiner enters into a transaction to sell or buy a refinery, particularly to the extent a refiner would intend to rely on the collective evaluation approach. For example, a refiner who sells a refinery in April and who is counting on summer gasoline to meet RFG or conventional gasoline toxics standards should ensure that the buyer refiner will produce gasoline of sufficient quality that the toxics standards are met for the refinery overall for the calendar year averaging period.

5. **Question:** Should the first sentence of § 80.65(e)(2)(ii)(B), which makes reference only to refiners, also make reference to importers?

Answer: The first sentence of § 80.65(e)(2)(ii)(B) should read as follows: "The refiner or importer shall have the gasoline analyzed for the property at one additional independent laboratory." Importer language inadvertently was omitted from this sentence when promulgated as evidenced by the use of "refiner or importer" language in the second sentence, and will be corrected in a future rulemaking.

INDEPENDENT SAMPLING AND TESTING

1. **Question:** Section 80.74(a)(2)(ii) requires "the identification of the person who collected the sample and the person who performed the testing." In the case where samples are taken and analysis performed by an independent testing company, would it be sufficient to identify the independent testing company in place of the sampler and tester?

Answer: Yes.

COMPLIANCE ON AVERAGE

1. **Question:** What are the units for RFG credit trading?

Answer: The units for oxygen and benzene credit trading are the units required for calculating batch properties under §§ 80.66(d) and (e), i.e., wt%-gallons for oxygen, vol%-gallons for benzene.

REPORTING, REGISTRATION AND RECORDKEEPING

1. **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.

DOWNSTREAM OXYGEN BLENDING

1. **Question:** The RFG regulation specifies a sampling rate of each 500 occasions or at least every 3 months for per gallon parties who use computer controlled in-line blending. EPA has also permitted computer controlled sequential blenders to use this sampling rate.

We use computer controlled sequential blending. Each blending arm is capable of multiple blends. When we reach the 500th occasion of blending on a given blending arm, do we sample only batch #500 (whatever grade that occasion happens to correspond to) or are we required to sample every grade (which means, e.g., we would be required to sample occasions #500, 501 and 502 if the blending arm is capable of three grades)?

Answer: Under § 80.69(e)(2), downstream oxygenate blenders who splash blend oxygenate with RBOB in trucks are required to conduct a quality assurance program of sampling and testing the RFG produced at the blending operation, and under § 80.69(e)(2)(ii)(B) for a computer controlled in-line blending operation the sampling rate must be one sample per each 500 occasions RBOB and oxygenate are blended in trucks, or one sample every three months, whichever is more frequent. EPA does not interpret this regulatory provision as requiring that the sample must be of the 500th blending occasion, but rather it requires that any one blend from among each 500 must be sampled. Further, EPA interprets this regulatory provision as intending that a single truck into which RBOB and oxygenate are splash-blended would constitute one blending "occasion," regardless of whether the truck is loaded with a single grade of RFG or with more than one grade.

2. **Question:** May a party add more oxygenate to RBOB than is specified in the product transfer documents for the RBOB?

Answer: Section 80.78(a)(7)(i) requires that RBOB may be blended only with oxygenate of the type and amount (or within the range of amounts) specified by the RBOB refiner, and recited in the RBOB product transfer documents. Nevertheless, there is no adverse environmental consequence if a party blends a quantity of oxygenate with RBOB that exceeds the specified amount, provided that the resulting RFG meets the oxygen maximum and substantially similar requirements. Note that under certain circumstances there is an adverse environmental consequence if the oxygenate type which is blended is different than the specified

type. In addition, there almost always is an adverse environmental consequence if the amount of oxygenate which is blended is less than the specified amount.

In consequence, EPA will allow parties to view the oxygenate amount specification for RBOB as a minimum, and add oxygenate amounts in excess of that minimum up to the applicable oxygen maximum under § 80.41(g) in the case of simple model RFG, or up to the substantially similar maximum in the case of all RFG. In no case, however, may a party add an oxygen amount which is less than the specified amount, or an oxygenate type which is different than the specified type. For example, if an oxygenate blender obtains non-VOC-controlled any-oxygenate RBOB for which 7.7 vol% ethanol (2.9 wt% oxygen) is specified, the oxygenate blender may blend up to 10 vol% ethanol (4.0 wt% oxygen). The oxygenate blender in this example could not, however, blend less than 7.7 vol% ethanol. EPA intends to modify § 80.78(a)(7)(i) in a future rulemaking to reflect this answer.

3. Question: In the case of an RBOB refiner conducting oversight over the RFG produced at a downstream oxygenate blending operation, what standards does EPA intend that the refiner should check through sampling and testing?

Answer: Under § 80.69(a) an RBOB refiner is required to calculate the non-oxygen parameter values for the RFG produced from the RBOB using either the oxygen blending assumptions under § 80.69(a)(8), or the actual oxygen blending levels if the refiner meets the contractual and quality assurance requirements specified in §§ 80.69(a)(6) and (7). The quality assurance provision of § 80.69(a)(7) states that the refiner must use sampling and testing to ensure that the RFG produced by the downstream oxygenate blender meets "applicable standards." The particular standards which are intended are not further specified in that paragraph, however.

EPA believes it is only necessary under § 80.69(a)(7) for the refiner to evaluate the RFG produced by an oxygenate blender for the oxygen type and amount, and not for other RFG standards. The RBOB used in any particular oxygenate blending operation could be from a fungible mixture of RBOBs (with identical requirements for oxygenate type and amount) that were produced at one refinery or at more than one refinery, and that probably would have different target values for the non-oxygen standards. As a result, it would not be meaningful for the refiner to test for the non-oxygen standards at the oxygenate blending facility. In addition, testing for the oxygenate type and amount will confirm whether the blender is using the oxygenate type and amount specified by the RBOB refiner and used by that refiner in their compliance calculations.

EPA believes there is little risk the RFG produced from RBOB will violate a downstream standard under this approach, because the RBOB refiner must specify an oxygenate type and amount for the RBOB such that the resulting RFG will meet all standards. For example, if a particular RBOB requires the dilution of 10 vol% ethanol to meet the benzene standard, the

RBOB refiner is required to specify 10 vol% ethanol for the RBOB, and any downstream oxygenate blender who uses this RBOB is required to add 10 vol% ethanol.

4. **Question:** Can EPA give any additional guidance as to the intent behind § 80.69(a)(4)?

Answer: Section 80.69(a)(4) requires RBOB refiners to determine properties of RBOB which will allow downstream parties to establish if the RBOB has been contaminated, in order to ensure the RFG produced using the RBOB will meet applicable RFG standards. This provision was included in the final rule in order to facilitate quality assurance programs by downstream parties who handle RBOB, particularly where RBOB from a specific refinery is transported as a segregated product. EPA now believes this provision has little value because of the fungible manner in which RBOB is being transported in practice. Moreover, EPA now believes that downstream parties may conduct fully adequate quality assurance programs over RBOB by hand blending the oxygenate type and amount that is specified for the RBOB, and testing for the downstream standards. In consequence, EPA intends to remove § 80.69(a)(4) from the RFG regulations in a future rulemaking, and in the meantime parties need not make the determinations specified in this paragraph.

ATTEST ENGAGEMENTS

1. **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.

ANTI-DUMPING REQUIREMENTS

1. **Question:** In a situation where Refinery A purchases finished conventional gasoline from Refinery B, Refinery B should include the gasoline in its compliance calculations and Refinery A should exclude it. If Refinery A blends the gasoline with its own blendstocks and, therefore, must mathematically adjust the volume and properties of the average conventional gasoline production to account for the gasoline from Refinery B, what properties should be used in this adjustment, the analysis performed by Refinery B prior to shipment, or the analysis performed by Refinery A as the product was received?

Answer: The analysis of the product that is performed by Refinery A should be used.

TRANSITION ISSUES

[NOTE: The following is a update of question 3 from the Transition Issues section, to clarify the options available to a terminal where the transition to VOC control is not complete by May 1.]

3. **Question:** How may terminals and retail outlets transition from VOC-controlled RFG to non-VOC-controlled RFG in advance of the high ozone season each spring?

Answer: Section 80.78(a)(1)(v) requires that RFG must be VOC-controlled for the proper VOC-control Region when stored or dispensed by terminals beginning May 1 of each year, and for retail outlets and wholesale purchaser-consumers beginning June 1 of each year. As a result, parties in the gasoline distribution system must transition from non-VOC-controlled RFG to VOC-controlled RFG in advance of these dates.

The RFG regulations do not prohibit combining VOC-controlled RFG with non-VOC-controlled RFG prior to these dates. As a result, VOC-controlled RFG may be added to a storage tank that contains non-VOC-controlled RFG in order to turn over the storage tank to the VOC-controlled specification, in advance of May 1 each year in the case of terminals, and in advance of June 1 each year in the case of retail outlets and wholesale purchaser-consumers.

A terminal that combines VOC-controlled and non-VOC-controlled RFG should treat the mixture as non-VOC-controlled until the party has a test result that shows the RFG meets all applicable VOC-controlled RFG standards. A terminal, therefore, should not supply product

transfer documents to distributors stating the gasoline is VOC-controlled until the terminal has a test result that would support this designation. Sampling and testing is not required by retail facilities in this situation; however, it may be prudent to conduct some testing at the retail level to ensure that adequate turnover has been achieved and the product meets all applicable VOC-controlled RFG standards.

In a case where the RFG in a terminal storage tank does not meet all applicable VOC-controlled RFG standards on May 1 in spite of deliveries of VOC-controlled RFG to that tank, the terminal may not distribute gasoline from that tank. The terminal operator may continue to deliver VOC-controlled RFG to this storage tank subsequent to May 1, however, and begin delivering the RFG as VOC-controlled if and when the RFG achieves the VOC-controlled standards.