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**RFG/Anti-Dumping
Questions and Answers
November 7, 1994**

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

RFG/ANTI DUMPING QUESTIONS AND ANSWERS, NOVEMBER 7, 1994

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through October 24, 1994, concerning the manner in which the EPA intends to implement and assure compliance with the reformulated gasoline and anti-dumping regulations at 40 CFR Part 80. This document was prepared by EPA's Office of Air and Radiation, Office of Mobile Sources, and Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Air Enforcement Division.

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

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

While we have attempted to include answers to all questions received by October 24, 1994, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document will be answered in a subsequent document. Questions that merely require a justification of the regulations, or that have previously been answered or discussed either in a previous Question and Answer document or the Preamble to the regulations have been omitted.

Topics Covered

RFG General Requirements
Downstream Oxygenate Blending
Registration/Recordkeeping/Reporting
Product Transfer Documentation
Anti-Dumping Requirements
Prohibitions
Downstream Blending Issues
Importer Issues

RFG GENERAL REQUIREMENTS

1. **Question:** The July 1, 1994 Question and Answer document (Question 1, VI.A.) provides guidance on how to combine batches shipped out of the same tank before it loses integrity. The example in the question stated that for a 100,000 barrel sampled and tested batch, where two shipments of 50,000 barrels and 20,000 barrels, respectively, are shipped out of the tank, and where the tank is subsequently "blended up" with additional barrels, the reported volume of gasoline of that batch would be 70,000 barrels (50,000 + 20,000). We interpret this answer to mean that the refiner has the option to combine the 50,000 and 20,000 barrel shipments and report them as one batch. The refiner could also opt to report each of the shipped batches separately using the same set of analytical tests to establish the quality of both batches. Is this correct?

Answer: Your interpretation is correct.

DOWNSTREAM OXYGENATE BLENDING

1. **Question:** Do all potential oxygenate blenders have to register? The August 29 Questions and Answers document, under "RFG General Requirements," Question 1, states that where multiple oxygenate blenders exist for a given event, only the one that reports and tests needs to register. This conflicts with what the EPA stated at the September 20 SIGMA conference that all potential oxygenate blenders must register.

Answer: The general rule is that all oxygenate blenders must register. However, in circumstances where there are multiple oxygenate blenders for the same oxygenate blending operation, the parties may agree that one of them will register and comply with recordkeeping and reporting. If that party fails to comply, however, each of the oxygenate blenders is responsible for the non-compliance.

2. **Question:** If a refiner supplies RBOB that specifies a range of allowable oxygenate (e.g. 2.0% to 2.7% oxygen by weight using MTBE) to an oxygenate blender covered under a contractual quality assurance program, can the refiner claim the actual amount of oxygenate blended for compliance purposes, or must he assume the minimum amount only? If the same refiner supplied the same blender with RBOB specified at different levels of the same oxygenate (e.g.-- MTBE at 2%, MTBE at 2.4%, and MTBE at 2.7%), would the blender be required to segregate the different RBOBs, or could they be mixed as long as the total amount of refiner specified oxygenate is used and the blended gasolines conform with the downstream standards?

Answer: The refiner may claim the actual amount of oxygenate added to a batch of "refiner specified" RBOB (i.e. RBOB which has accompanying instructions specifying the type and amount of oxygenate to be added), as long as there is a contractual relationship, including sampling and testing, with the downstream blender.

With respect to segregation of RBOBs, the RFG regulations require that RBOBs with different blending requirements be segregated to the point of blending. RBOBs that are identical with regard to the oxygenate blending requirements, on the other hand, may be fungibly mixed.

3. **Question:** With reference to a refiner-specified RBOB, can the testing performed by the oxygenate blender to fulfill the oxygenate blender's sampling and testing requirements specified in § 80.69(b) also be used to fulfill the refiner's sampling and testing requirements specified in § 80.69(a), provided the more stringent testing frequency of §§ 80.69(a) or (b) is satisfied? Does the answer depend on whether or not the refiner and the oxygenate blender are the same entity?

Answer: Section 80.69(b) requires an oxygenate blender who produces RFG designated for compliance with the oxygen standard on average to determine the volume and weight percent oxygen of each batch of RFG. Under § 80.69(a), the refiner of refiner-specified RBOB (in addition to conducting tests in accordance with the procedures set forth in § 80.69(a)(2) on each batch of RBOB it produces), must conduct a quality assurance sampling and testing program at the oxygenate blending facility to determine whether the reformulated gasoline produced complies with applicable standards. The regulations, therefore, require the oxygenate blender to conduct its batch testing for oxygenate independently from the refiner's quality control testing of the gasoline produced using RBOB. Where the refiner of the RBOB is also the oxygenate blender, the party could fulfill both testing requirements with one testing program; however, it would still require testing each batch of the RFG produced for volume and weight percent of oxygen and quality assurance sampling and testing for all of the applicable RFG standards in accordance with the rates and procedures designated in § 80.69(a)(7).

4. **Question:** The quality assurance sampling and testing program required of refiners in § 80.69(a)(7) is intended "to determine whether the reformulated gasoline which has been produced through blending complies with the applicable standards." What are the applicable standards referenced in this statement?

Answer: The "applicable standards" referred to in § 80.69(a)(7) are all of the standards applicable to finished RFG.

REGISTRATION/RECORDKEEPING/REPORTING

1. **Question:** In the answer to Question 24, Section VI.H., of the July 1, 1994 Question and Answer Document, it states that batches of certified RFG can be combined into one refinery tank before being shipped outside the refinery. How to you assign fuel parameters to the shipped volumes?

Answer: Fuel parameters are determined and recorded for each finished batch of RFG. The volume recorded is the batch volume, which normally is the volume that is moved out of the

blending tank, regardless of whether the batch is shipped out of the refinery directly from the blending tank, or is combined with other batches of certified RFG in a storage tank prior to being shipped out of the refinery.

PRODUCT TRANSFER DOCUMENTATION

1. **Question:** May a downstream operator purchase OPRG that contains at least 2.0 weight % oxygen and downgrade and market the product as non-OPRG with all the required product transfer documents messaging for non-OPRG?

Answer: Yes.

2. **Question:** The bill of lading which we are currently using at our truck rack has a limited message field. We are not quite able to fit the entire statement "This product does not meet the requirements for reformulated gasoline...." unless we abbreviate something. Can the words reformulated gasoline be abbreviated to RFG and, if not, can the first appearance be followed by the abbreviation in parenthesis, e.g. reformulated gasoline (RFG), with subsequent appearances of the words "reformulated gasoline" replaced by the letters RFG?

Answer: While the regulations require that PTD's include the specific language located at § 80.106(a)(1)(vii), EPA would allow the use of the term "RFG" to replace "reformulated gasoline" if the PTD's also clearly reflect that RFG means reformulated gasoline, such as in the second option listed above.

3. **Question:** Can you verify that the average standards min/max's listed in response to Question 6 of the PTD section of the Question and Answer document dated August 29, 1994, will satisfy the PTD requirements for downstream transfers even if the RFG being transferred is commingled from both averaged and per-gallon batches.

Answer: Yes, the minimum and maximum standards associated with the average standards are the correct minimum and maximum standards to list on the PTD's for all downstream transfers.

ANTI-DUMPING REQUIREMENTS

1. **Question:** Expanding on Question 13 in the Anti-Dumping section of the August 29, 1994 Questions and Answers, assume that a refiner had a 10,000 gallon blend tank and a 50,000 gallon shipping tank. Also, assume that RFG is certified and accounted for as quality and quantity of product moved from the blend tank to the shipping tank. If the refiner had to start blending into the shipping tank for any of a variety of reasons (blend tank out for maintenance, operational

problems, etc.), how would the refiner account for the quality and quantity of the previously certified and accounted for product in the heel of the shipping tank that will be sampled and measured during the batch certification process? Could the refiner sample the heel of the shipping tank prior to blending and deduct the heel's quality and quantity from his calculations? This situation assumes that the refiner does not make shipments from the shipping tank while product is being blended into it and prior to the product's certification.

Answer: Normally, a refiner would certify the properties of each batch produced based on a sample of gasoline collected after all the blending components have been added and mixed with the heel in a blend tank. The volume of each batch would be the volume of gasoline that is transferred from the blend tank up to the point when additional blendstocks are added to the tank to begin the subsequent batch. The heel would be considered another blending component for the subsequent batch. In the scenario you describe, however, where circumstances necessitate blending in a shipping tank that holds previously certified RFG, the heel would have been accounted for as a part of the previous batch volume. Consequently, it would be appropriate to determine batch volume and properties using the method you describe, by: 1) sampling and testing the heel of a storage tank to determine its volume and properties; 2) sampling and testing the entire storage tank subsequent to blending to determine its volume and properties; and 3) mathematically subtracting the volume and properties of the heel from those of the entire tank to determine the batch volume and properties.

PROHIBITIONS

1. **Question:** Can two batches of RFG -- one oxygenated with MTBE and the other oxygenated with TBA -- be commingled? It is our understanding that TBA, despite being alcohol-based, does not present the same volatility problems that are associated with ethanol. If this understanding is correct, then it should be permissible to commingle two batches of RFG oxygenated with MTBE and TBA without violating either the RFG volatility standard or the sub-sim standard.

Answer: The RFG regulations do not prohibit the commingling of a batch of RFG oxygenated with MTBE with a batch of RFG oxygenated with TBA, so long as all of the standards and requirements of the regulations are met. The sub-sim standard is not violated where two gasolines, both of which are legal under the sub-sim rule, are commingled downstream.

DOWNSTREAM BLENDING ISSUES

1. **Question:** Must a terminal be registered as a "refinery" in order to blend "transmix" in accord with guidance per the August 29th Question and Answer document, pages 40-41, which updated IX-B-16 from the July 1 Questions and Answers document? We believe the answer is "no" for blending into either RFG or conventional gasoline.

Answer: As the August 29, 1994 Question and Answer document indicates, blending "transmix" may constitute illegal blending under the RFG and anti-dumping provisions if the blender does not meet all applicable refiner standards and requirements. One of these refiner requirements is registration.

IMPORTER ISSUES

1. **Question:** Can a party that is both a refiner and an importer import RFG under the volume-weighted average of all its individual refinery baselines?

Answer: No. For RFG, parties that are both refiners and importers must establish separate baselines for each capacity. Under the anti-dumping requirements, § 80.101(f)(3) states that in the case of a party that is both a refiner and an importer, and for whom an individual 1990 baseline has not been established for the imported product under § 80.91(b)(4), the compliance baseline for the imported product shall be the 1990 volume weighted average of all of the refiner's individual refinery baselines. However, § 80.101(f)(3) applies only to conventional gasoline and does not affect the baseline that applies to imported RFG. See also, Question 4 of the Anti-Dumping Section of the Questions and Answers for August 29, 1994.