VIII. INTERACTION WITH STATE PROGRAMS

A. OXY FUEL PROGRAM

1. **Question:** The federal oxy fuels program requires transfer documents to contain oxygen type and oxygen weight % and volume % information on each oxy gasoline movement. The RFG program requires a min/max oxygen statement which essentially duplicates the oxy program requirements. Is it sufficient to print the RFG required message rather than both the oxy program and RFG program messages?

Answer: The winter oxygenated fuels programs are state, not federal, programs. There are no federal oxy transfer document requirements, merely federal guidance to the states. Generally, the state winter oxy fuels programs do not have product transfer requirements.(7/1/94)

2. **Question:** In areas where an oxy fuels program is in effect, how do these requirements coincide with RFG requirements? In areas where there is an overlap, are any regulatory changes necessary by the state?

Answer: In areas that are covered by both a state's winter oxy fuels and the federal RFG programs, the fuel must comply with both program requirements. Therefore, the more stringent 2.7 wt% minimum requirement of the winter oxy fuels programs must be met during the oxy control period. States do not have to make any regulatory changes.(7/1/94)

3. **Question:** Has there been any discussion about waiving the oxy program for California since the RFG fuel will exceed California's minimum oxy program standards? If the oxy program continues in California do we adhere to the maximum standard of 2.2 wt% instead of the 3.5 wt% maximum for winter RFG.

Answer: California has applied for a waiver under section 211 (m) of the Act from the federally mandated 2.7 wt% oxygen program for their 1.8 wt% minimum, 2.2 wt% maximum oxygen program. EPA has not taken final action on that program. Should EPA approve that California program then the State's 1.8 wt% minimum and 2.2 wt% maximum would be the applicable state oxygen standard in California. However, RFG 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 also be required to meet the federal RFG oxygen content requirement of 2.0 wt%(2.1 wt% oxygen if met on average). 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 Act[1], 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., 2.0% oxygen by weight if met as a per-gallon standard).

Therefore, should the California oxy waiver be approved, gasoline in the Southern California covered areas must comply with both the federal 2.0 wt% oxygen requirement and the state's 1.8 wt% minimum oxygen and 2.2 wt% maximum oxygen standards.(7/1/94)

B. OTHER STATE FUELS PROGRAMS

1. **Question:** Now that EPA has issued final regulations for reformulated and conventional gasoline, what if any state fuel controls are preempted?

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[1] See 58 FR 11747 (February 26, 1993).

Answer: After EPA promulgates a federal fuel control or prohibition under section 211(c)(1) of the Act, state fuel controls respecting the same fuel characteristic or component as the federal regulation are preempted. A state may only adopt and enforce such a fuel control if it is approved by EPA as a SIP revision, after a showing that it is necessary to achieve the NAAQS that the plan implements. Prior to December 15, 1993, EPA had issued regulations under section 211(c)(1) that control the lead content and volatility of gasoline. State controls for these gasoline characteristics or components are subject to the above preemption provision.

The reformulated and conventional gasoline regulations were issued under the authority of both section 211(c)(1) and 211(k). State controls respecting the gasoline characteristics or components controlled or prohibited in the RFG and conventional gasoline regulations are therefore preempted, like state volatility and lead content controls. In general, the gasoline characteristics or components controlled or prohibited under these federal regulations vary depending on the program (RFG or conventional) and the model (simple or complex).(7/1/94)

2. **Question:** Under RFG, can a state provide a volatility allowance for ethanol during the winter months for both RVP and distillation? During the summer, can a state provide ethanol blends a distillation allowance from ASTM requirements?

Answer: There is no federal RVP requirement for RFG that is not VOC-controlled . States are therefore not preempted from regulating wintertime RVP for such fuels.

With respect to state controls on summertime distillation characteristics, the RFG rules establish annual controls on T-90 under the simple model. As such, state controls on T-90 are preempted during the simple model time period. States are not preempted from establishing controls on other distillation characteristics.

It is important to note that even if a state is not preempted and enacts a state fuel control, this does not change the federal requirement for either reformulated or conventional gasoline. The regulated community must still comply with all the applicable federal requirements, notwithstanding the existence of a state fuel control.(7/1/94)

3. **Question:** For areas not required to use RFG, do states have the ability to set ASTM performance specifications and any volatility allowances from those specifications for ethanol blended fuels?

Answer: Areas not required to use RFG are subject to the conventional gasoline and federal volatility regulations. States may not set ASTM performance specifications for characteristics or components that are controlled or prohibited by these federal regulations, subject to approval as a SIP revision. For example, state RVP limits in both conventional and RFG areas are preempted unless they are approved as a SIP revision.(7/1/94)

4. **Question:** Many states have adopted a 1.0 psi waiver for ethanol blends during the RVP control period. In areas where RFG is required, do states need to amend that regulation in any fashion in order to not be in conflict with RFG requirements?

Answer: In areas where RFG is required, states are preempted from having RVP requirements which are different from the RFG simple model requirements unless those requirements are approved by EPA as a SIP amendment which is necessary to attain a national ambient air quality standard. In any case, the federal regulation applies and regulated parties must meet the RVP and other requirements applicable to RFG.(7/1/94)

5. **Question:** Can a state provide a T-50 waiver for oxygenates other than ethanol under EPA waiver limitations?

Answer: Any state waiver for T-50 would not change the federal substantially similar rule or federal fuel waiver requirements. Therefore, such a T-50 waiver would have no force or effect federally. (7/1/94)

6. **Question:** How will RFG impact ASTM motor fuel specifications?

Answer: Fuel marketed in RFG areas must comply with the RFG regulations. If ASTM standards conflict with the RFG regulations, The ASTM standards will, in effect, be superseded.(7/1/94)

IX. SUPPLEMENTAL QUESTIONS

A. TRANSITION ISSUES

1. **Question:** How may regulated parties transition from conventional gasoline to RFG in advance of the December 1, 1994 date terminals serving RFG areas must be on-spec for RFG.

Answer: Section 80.65(a) specifies that the RFG requirements apply to all gasoline produced, imported, transported, stored, sold, or dispensed at terminals that supply gasoline to RFG covered areas beginning on December 1, 1994, and at the retail level in RFG beginning on January 1, 1995. As a result, the prohibition, at § 80.78(a)(10) against combining RFG with conventional gasoline and calling the mixture RFG, does not apply at the terminal and retail levels until December 1, 1994 and January 1, 1995, respectively. Prior to these dates, terminals and retail outlets may place RFG into storage tanks that contain conventional gasoline, in order to turn over their storage tanks to RFG. However, the storage tanks of terminals and retailers must contain only RFG as of December 1 and January 1, respectively.

The RFG requirements apply to refiners and importers beginning on the date these parties first begin producing or importing RFG, however, because this gasoline will be "dispensed at terminals" beginning December 1, 1994, even if the refiner's or importer's RFG production begins in September or October, 1994. In effect, the RFG requirements apply to all gasoline designated by the refiner or importer as RFG, whenever produced or imported.(7/1/94)

2. **Question:** May terminals or distributors supply conventional gasoline to a retail outlet in an RFG covered area during December 1994, if the retail outlet is brought into compliance with the RFG standards by January 1, 1995?

Answer: No. Beginning December 1, 1994 all gasoline deliveries into RFG covered areas must be of RFG only.(7/1/94)

3. **Question:** During the transition into reformulated gasoline, is it permissible prior to December 1, 1994, for a refiner to blend components (either its own manufacture or purchased) with another refinery's finished gasoline and designate that resulting product as reformulated gasoline if all necessary properties are met and if the third-party finished gasoline used in the blend was not designated by the manufacturer as reformulated gasoline?

Answer: Yes, as long as the resulting product is properly sampled and tested and meets the standards for RFG, and all other regulatory requirements for a refiner of RFG are met.(8/29/94)

4. **Question:** When replacing conventional gasoline with RFG at a terminal, is it considered blending if the RFG is mixed with conventional bottoms?

Answer: During the transition period prior to December 1, 1994, certified RFG may be put into tanks that contain conventional gasoline bottoms, as long as the tank is essentially filled with certified RFG gasoline on December 1, 1994, and the gasoline is properly sampled and tested and is in compliance with the RFG downstream standards. After December 1, 1994, the mixing of RFG and conventional gasoline is prohibited.

5. **Question:** It is our understanding that prior to December 1, 1994, a refinery could make RFG quality gasoline, designate it as conventional gasoline and ship it to terminals that, as of December 1st, will be wholly dedicated to RFG markets. Of course, at some point prior to December 1st, these terminals will need to sample and test their gasoline to ensure that is it RFG quality before they can redesignate it as RFG. Would the EPA have any concerns with this approach?

Answer: This can be done to some extent, however, the terminal will need to receive RFG that has been certified as RFG by the refiner or importer in advance of December 1, 1994, so that its tanks essentially will be filled with certified RFG by December 1.(8/29/94)

6. **Question:** Can a finished (say 97 r+m/2) gasoline not conforming to anti-dumping or RFG specs be held in tankage in October or November 1994, and then be blended to RFG?

Answer: Yes. As stated in Question 1 above, the blended product must be properly sampled and tested and meet the standards for RFG, and all other refiner requirements under the regulations must be met.(8/29/94)

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

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

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

1. No deliveries of conventional gasoline were made to the facility after November 30, 1994.

2. The party could not have turned over the gasoline in a storage tank from conventional to RFG through deliveries of RFG prior to January 1, 1995 without pumping out the conventional gasoline in the tank. This condition would be met, for example, in the case of a party (such as the marina described in the question) who required a delivery of gasoline before

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

3. The party received delivery of the largest possible volume of RFG into the storage tank in question as soon as was possible. Thus, a wholesale purchaser-consumer or retailer who received a large delivery of conventional gasoline before December 1, 1994 should order the largest volume of RFG possible before January 1, 1995, and should continue to transition the storage tank to RFG as quickly as possible subsequent to January 1, 1995.

4. The pattern of gasoline deliveries into the storage tank in question is consistent with the historical pattern of gasoline deliveries into that tank, and was not the result of a decision to maximize the volume of conventional gasoline purchased in order to minimize the volume of RFG purchased.

(12/5/94)

8. **Question:** How may terminals and retail outlets transition from non-VOC-controlled RFG to 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. (4/18/95)

9. **Question:** Section 80.78(a) requires segregation of several categories of gasoline and precludes the mixing of any amount of the gasolines that must be segregated.

EPA recognized the difficulty in changing the service of a storage tank as a result of tank heels, and outlined a 5-step procedure for changing the service of a gasoline storage tank. EPA's description of this procedure does not state that a company will avoid violating the § 80.78(a) segregation prohibition if this procedure is followed, and, therefore, the procedure appears to expose companies to liability for violation of the segregation requirements.

In addition, EPA outlined procedures for dealing with interface mixtures. It is unclear if a party who follows these procedures will be in violation of the § 80.78 segregation prohibitions. If this interface activity is considered a violation, the regulated parties will be exposed during all sequential shipping of gasoline on a pipeline, an activity acknowledged by EPA to be necessary for conducting business and supplying gasoline to the marketplace. Without some type of relief, regulated parties will not be able to ensure delivery of available supplies of RFG.

Will EPA exercise enforcement discretion and not initiate an enforcement action if parties follow the procedures described in the Question and Answer Document, or will EPA enter into written enforcement protocols with regulated parties to ensure no enforcement actions are brought in order to "facilitate the orderly conduct of business."

Answer: A party who follows the procedures for dealing with the change of service for a gasoline storage tank, or for dealing with pipeline interface mixtures, that are described in the Question and Answer Document will be considered by EPA to be acting in a manner that is consistent with the segregation requirements expressed in the regulations.(8/29/94)

10. **Question:** Most refiners will produce simple model RFG during 1995 through 1997, and complex model RFG when required beginning in 1998. How may parties carry out this transition from simple to complex RFG, given the prohibition against mixing simple and complex RFG? How will the survey account for the transition period from simple to complex RFG in late 1997 or early 1998?

Answer: EPA recognizes that the transition from the simple to the complex model in early 1998 will necessarily include a time- period during which the distribution system will contain a mixture of simple and complex RFG. As a result, the gasoline quality surveys, quality assurance programs, and EPA enforcement activities during this transition period will have to take this mixture into account with regard to certain, but not all, downstream standards. EPA intends to issue guidance well in advance of 1998 on this transition from simple to complex RFG.(7/1/94)

11. **Question:** Please explain how the transition from simple to complex model standards will occur?

Answer: Under 40 CFR §§ 80.41(i) and 80.101(c) the simple model standards apply to RFG and conventional gasoline produced or imported prior to January 1, 1998, along with certain limited options to use the complex model early. Also under these sections, the complex model standards apply to RFG and conventional gasoline produced or imported beginning on January 1, 1998. As a result, all gasoline produced or imported prior to January 1, 1998, must meet the simple model standards (or the early complex model standards where a proper election has been made), and all gasoline produced or imported beginning on January 1, 1998, must meet the complex model standards.

In the case of conventional gasoline, where there are no downstream standards, this transition raises no issues regarding enforcement of downstream standards. In the case of RFG, however, there is an issue of when the downstream complex model standards will be enforced.

Under 40 CFR §§ 80.41(a) through (d) the RFG simple model includes standards for oxygen, benzene and simple model toxics emissions performance, and in the case of VOC controlled RFG, for RVP. The complex model includes RFG standards for oxygen and benzene that are the same as under the simple model, for toxics and NOx emissions performance, and in the case of VOC controlled RFG, for VOC emissions performance. The simple and complex model toxics emissions performance standards are not subject to downstream standards, while all other standards are subject to downstream enforcement.

Beginning on January 1, 1998, in most situations the RFG downstream of the refinery/importer

level will be a combination of RFG produced to the simple model (RFG certified before January 1, 1998), and RFG produced to the complex model (RFG certified beginning on January 1, 1998) as a result of this transition and the fungible mixing of RFG that occurs. RFG will continue to be a mixture of simple and complex model RFG until complex model RFG displaces the simple model RFG in the system.

During this transition period the oxygen and benzene standards may be enforced without interruption, because these standards are unaffected by the transition from simple to complex model standards. Even during the transition period, in a situation where the RFG located downstream was produced entirely under the simple model, the simple model downstream standards may be enforced, and where the RFG was produced entirely under the complex model, the complex model downstream standards may be enforced. In the case of RFG that is a mixture of simple and complex model RFG, however, the RFG cannot be properly evaluated for compliance with the complex model VOC and NOx emissions performance standards, however. This difficulty results because it is possible for a particular RFG formulation to meet all simple model standards, yet not meet the complex model VOC and NOx emissions performance standards.

This enforcement difficulty is automatically resolved in the case of the VOC emissions performance standard, because under 40 CFR § 80.78(a)(1)(v) the VOC standard does not apply at downstream locations until May 1, 1998, or in the case of retail level facilities, on June 1, 1998. EPA believes the period between January 1, 1998, and May 1, 1998, is an adequate time for the gasoline distribution system to complete the transition to complex model RFG. As a result, the VOC emissions performance standard will be enforced at downstream locations beginning on May 1, 1998, or June 1, 1998, in the case of retail level facilities.

The NOx emissions performance standard, in contrast, applies at all locations beginning on January 1, 1998. As a result of the transition issue discussed above, however, EPA will exercise enforcement discretion and will not enforce the NOx emissions performance standard at downstream locations until May 1, 1998. Unlike for enforcement of the VOC emissions performance standard, however, the NOx emissions performance standard will be enforced at all downstream locations beginning on May 1, 1998, including facilities at the retail level.

An additional category of complex model standards that will be enforced at the refinery/importer level beginning on January 1, 1998 are the complex model limits specified at 40 CFR § 80.45(f)(1)(i). These complex model limit standards will be enforced at downstream locations beginning on May 1, 1998, for the same reasons discussed above.(11/12/96)

B. DOWNSTREAM BLENDING ISSUES

1. **Question:** Please confirm that a terminal can blend complying grades of gasoline to form another grade of gasoline and the terminal would not be considered to be a refiner. An example would be the blending of premium unleaded and unleaded regular to provide mid-grade unleaded.

Answer: The blending of two certified RFG gasolines to make a mid-grade gasoline is permitted provided that the segregation restraints specified in section 80.78 are not violated. The terminal or gasoline station will not be considered a refiner provided no other blendstock is added to the mixture.(7/1/94)

2. **Question:** Can batches of simple model RFG be commingled without recertification?

Answer: Yes, subject to the segregation requirements at section 80.78.(7/1/94)

3. **Question:** A major refiner decides to implement early use of the complex model. That company has

product that has the same quality specifications (within the ASTM reproducibility parameters) as the product an importer has in a tank. Can the importer purchase this product? If not, are there any circumstances during early use of the complex model where a company can have product fungibility?

Answer: The importer may purchase the product, however, simple and complex model RFG cannot be mixed upstream of the retail level. Also, prior to January 1, 1998, two complex model RFGs from different refineries or importers cannot be mixed at any point in the distribution system.(7/1/94)

4. **Question:** Is it correct that the regulations do not prohibit the mixing of ETBE RFG and MTBE RFG at any point in the distribution system.

Answer: Yes, provided the segregation restrictions in section 80.78 are met.(7/1/94)

5. **Question:** Can ether RFG and alcohol RFG be mixed outside the VOC season provided the substantially similar requirements are not violated.

Answer: VOC-controlled RFG produced with ethanol cannot be mixed with VOC-controlled any-oxygenate RFG from January 1, through September 15 at any point in the distribution system, including at retail outlets and wholesale-purchaser consumers facilities.(7/1/94)

6. **Question:** Is it correct that the regulations do not prohibit the mixing of RFG with conventional gasoline for sale outside RFG covered areas?

Answer: Yes, provided the resulting gasoline is not sold as RFG and the procedures discussed in question 1 of the remedies section are followed.(7/1/94)

7. **Question:** Is it legal for a retail outlet or wholesale purchaser-consumer facility to commingle RFG which meets the "substantially similar" requirements (e.g., a 15% MTBE blend) with RFG which is produced under a § 211(f) waiver (e.g., a 10% ethanol blend)? Similarly, is it legal for a retail outlet or wholesale purchaser-consumer to commingle conventional gasoline which meets the "substantially similar" requirements with conventional gasoline produced under a § 211(f) waiver? The concern is that the resulting mixture, as dispensed from the pump, would not comply with the substantially similar criteria or one of the waivers.

Answer: It is not a violation of the RFG regulations to commingle two legal RFG products at a retail outlet or wholesale purchaser-consumer facility, or a violation of § 211(f) to commingle two legal conventional gasolines at a retail outlet or wholesale purchaser-consumer facility. However, this could cause compliance problems with the summertime RFG requirements for RFG, or summertime volatility restrictions for conventional gasoline.(8/29/94)

8. **Question:** What procedures must be followed if product is downgraded, e.g., RFG is downgraded to conventional? What procedures apply at the refinery as opposed to downstream?

Answer: There is no prohibition on the sale of RFG in conventional areas. Once a batch of gasoline is certified as RFG and released from the refinery its designation cannot be changed by the refiner. However, the refinery can change the designation of gasoline which has not been fungibly mixed with other certified gasoline before it leaves the refinery. If this is done, appropriate changes in the refinery's records should be made.

When gasoline located downstream of the refinery or import facility is designated as reformulated, but does not meet the applicable RFG downstream standards (plus any applicable enforcement tolerance), the party is prohibited from selling, distributing, transporting, or storing this

gasoline as RFG. A party may downgrade RFG to conventional gasoline, and use the gasoline only outside any RFG covered area. There is no requirement that such downgraded gasoline must be included in any party's anti-dumping compliance calculations.

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

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

If the off-spec gasoline is found at a retail outlet or wholesale purchaser-consumer facility located in an RFG covered area, all sales of gasoline from the tank must be stopped, and the gasoline removed from the storage tank and transported to an area that is appropriate for the downgraded classification of the gasoline.(7/1/94)

9. **Question:** Simple model gasoline may be released immediately after receiving results for oxygen, benzene, and RVP with other results to follow. If these or other results fail, can this batch be reclassified as conventional if it is diverted away from a RFG area?

Answer: If the batch has not been released or fungibly mixed with certified RFG by the refiner, it may be reclassified. Once a batch of gasoline has been designated by the refiner and released it cannot be reclassified by the refiner. RFG found downstream to violate applicable RFG standards may be corrected by downgrading, however, following the procedures outlined in question 1 of the remedies section.(7/1/94)

10. **Question:** Should a distributor or blender wish to alter the parameters of RFG purchased from others by adding a blending component, are there limitations and/or restrictions on this type of activity? For example, in the Spring, will it be permissible to add a low-pressure blending component to gasoline in order to control volatility? Also, will it be permissible to blend octane deficient gasoline with an octane blending component to restore octane to specification? If blending is allowed can only the end product be tested and certified or is it necessary to certify each blending step? Is blending in the above manner restricted to companies who have a history of blending gasoline or will the uninitiated also be permitted to blend components?

Answer: The addition of a blendstock to certified RFG would result in the blender becoming a refiner under the RFG regulation. Refiners must establish a baseline, register with EPA and comply with all the testing, certification and other refiner requirements under the regulation. In consequence, a blendstock may not be added to RFG unless that blendstock meets all RFG standards. Any company that does meet the requirements of an RFG refiner, however can produce RFG through blending.

RFG which is changed in this manner could, however, be sold outside the RFG covered areas as conventional gasoline. However, the blender is considered a refiner under the antidumping requirements and thus is responsible for the properties of the blendstock which is added to the finished RFG. Antidumping compliance calculations for blendstocks which are added to finished gasoline are discussed in section IX (D) of the preamble to the final regulations at 59 FR 7806.(7/1/94)

11. **Question:** The regulations state that no person may combine any RFG with any non-oxygenated blendstock unless that person meets each requirement specified as a refiner. Does this mean that if any such blending is done at a terminal then they would be required to have the full analytical capabilities

required of a refinery. Could metering at the terminal be an acceptable substitute? Can documented blendstocks be blended and certified using meters?

Answer: The addition of a blendstock to certified RFG, or the combination of several blendstocks to produce RFG, would result in the blender becoming a refiner under the RFG regulation with all the testing, certification and other requirements under the regulation. Metering at the terminal is not an acceptable substitute for the sampling and testing requirements for a refiner.(7/1/94)

12. **Question:** What are limitations, if any, on blending RFG with materials for sale into non-RFG markets?

Answer: When RFG is blended with blendstocks, the blender is considered a refiner under the antidumping requirements and thus is responsible for the properties of the blendstock which is added to the finished RFG. Compliance calculations for blendstocks which are added to finished gasoline are discussed in section IX (D) of the preamble to the final regulations at 59 FR 7806.(7/1/94)

13. **Question:** Can material that does not conform with commercial specifications for gasoline still be considered gasoline for compliance with the RFG regulations? For example, could a mixture of butane and MTBE be blended with non-VOC controlled simple model RFG? The butane-MTBE mixture would meet the winter RFG benzene, oxygen, and toxics requirements, but would not conform with ASTM vapor pressure, distillation, and volatility specifications.

Answer: Blending components that are added to RFG must meet the standards for RFG and the party who conducts such blending must meet all requirements that apply to refiners. The regulations, however, do not require them to also conform with commercial specifications for gasoline.(8/29/94)

14. **Question:** Can you blend normal butane and natural gasoline, whose composition cleaner than RFG, and certify it as RFG?

Answer: A party who produces RFG by combining blendstocks is a refiner under the RFG regulations, and is subject to all RFG standards and requirements. See the answer to Question 7, Section IX.B., of the July 1, 1994 Question and Answer document. As a result, a party who combines normal butane and natural gasoline could certify the resulting product as RFG, provided the gasoline meets all RFG standards and the party meets the other refiner requirements, including those involving sampling and testing, independent sampling and testing, recordkeeping, reporting, and independent audits.(10/17/94)

15. **Question:** If a downstream blender alters an RBOB by addition of other hydrocarbons, how is the baseline selected and how is the fuel regulated and reported?

Answer: Section 80.78(a)(7) prohibits any person from combining RBOB with any other gasoline, blendstock, or oxygenate except for oxygenate of the type and amount (or within the range of amounts) specified by the refiner or importer at the time the RBOB was produced or imported, or other RBOB for which the same oxygenate type and amount (or within the range of amounts) was specified by the refiner or importer. Altering RBOB in any other way would be a violation.(8/29/94)

16. **Question:** What options are available to pipelines for dealing with interface material, i.e., mixtures of two different types of product that result when the different products are adjacent during pipeline movement?

Answer: Interface Mixtures Involving RFG or RBOB

First, the pipeline must minimize the instances of prohibited mixing, through the sequencing together of product types that may be legally mixed, to the greatest extent possible.

Second, in those instances where illegal interface mixing occurs, the entire interface must be added to the product that will most ensure no adverse environmental consequences of the mixing. For example:

a. Interface mixtures of RFG or RBOB and conventional gasoline must be classified as conventional gasoline.

b. Interface mixtures of VOC-controlled RFG and non-VOC-controlled RFG must be classified as non-VOC-controlled RFG.[2]

c. Interface mixtures of VOC-controlled RFG for Region 1 and VOC-controlled RFG for Region 2 must be classified as VOC-controlled RFG for Region 2 or as non-VOC-controlled RFG.

d. Interface mixtures of OPRG-designated RFG and non-OPRG-designated RFG must be classified as non-OPRG-designated RFG.

e. Interface mixtures of VOC-controlled, OPRG RFG and non-VOC-controlled, non-OPRG RFG must be classified as non-VOC-controlled, non-OPRG RFG.

f. Interface mixtures of RBOB and RFG must be classified as RBOB.

g. Interface mixtures of any-oxygenate RBOB and ether-only RBOB must be classified as ether-only RBOB.

h. Interface mixtures of generic RBOB (i.e., any-oxygenate or ether-only RBOB) and refiner-specific RBOB (under § 80.69(a)(1)) must be classified as refiner-specific RBOB.

Third, the pipeline must retain documents that reflect the nature of any illegal interface mixing and that the interface was classified in the proper manner, and must make these documents available to EPA upon request.

Interface Mixtures Involving Conventional Gasoline and Not Involving RFG

In the case of interface mixtures that do not involve RFG or RBOB, pipelines may follow their historical practices, and will not be treated as a refiner based on such interface mixtures, so long as:

First, the interface to be blended is generated through pipeline operations, i.e., the blending does

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[2] The mixing of VOC-controlled RFG with non-VOC-controlled RFG is not prohibited during the transition period prior to May 1 each year (prior to June 1 each year for retail outlets), and subsequent to September 15 each year. During the VOC transition period, however, mixtures of VOC-controlled RFG and non-VOC-controlled RFG nevertheless must be classified as non-VOC-controlled unless the resulting mixture meets the applicable VOC downstream standard (as discussed in the Transition section of this document), and during the VOC-control period such mixtures also must be classified as non-VOC-controlled RFG.

not involve blendstocks that are present for the purpose of blending.

Second, the conventional gasoline involved meets all standards and requirements that apply to conventional gasoline, including the volatility standards and the substantially similar requirements;

Third, the volumes of interface are recorded and made available for EPA inspections.

For example, in the case of interface mixtures that involve conventional gasoline and blendstocks (natural gasoline, raffinate, naphtha, etc.), if a pipeline historically has used midpoint cuts for this type of interface the pipeline could continue this practice without meeting the "refiner" requirements as a result of any blendstock that would be mixed with conventional gasoline through this process. It would not be appropriate, however, to classify all blendstock-conventional gasoline interface mixtures as conventional gasoline, i.e., to "clean cut" the interface into the conventional gasoline, because this practice would result in a net increase in conventional gasoline volume.

Interface mixtures that include neither RFG nor conventional gasoline are not impacted by the RFG/anti-dumping regulations.

Transmix

EPA understands there are certain types of interface mixtures that cannot be easily added to either of the adjoining products that produced the interface. This primarily is the case of interface mixtures of gasoline and distillate, commonly called "transmix." EPA further understands that the current pipeline industry practice is to transport transmix via pipeline or barge to a facility designed to separate the gasoline and distillate portions. The owner or operator of such a facility is called a "transmix processor," and is a refiner under the RFG and anti-dumping programs.

Transmix Processors

A transmix processor may use the gasoline or gasoline blendstock obtained when transmix is separated to produce RFG or conventional gasoline, so long as the gasoline produced is included in the refinery's RFG and/or anti-dumping compliance calculations for the refinery, and all other refinery requirements are met, including sampling and testing, record keeping, reporting, and attest engagements.

Gasoline produced which is classified as conventional gasoline

In the case of conventional gasoline produced from transmix by a transmix processor, the anti-dumping standards and requirements need not be met provided that the following conditions are met:

First, the transmix used must be a mixture of distillate and gasoline - either RFG or conventional gasoline. If the transmix is a mixture of distillate and blendstock, the blendstock will never have been accounted-for, and the transmix processor must meet the anti-dumping refiner standards and requirements for any gasoline produced using this transmix.

Second, no additional blendstocks may be used. If blendstocks are used, in addition to the transmix, the transmix processor must meet the anti-dumping refinery standards and requirements for this blendstock in the same manner as any other blender-refiner. A transmix processor could, of course, blend gasoline produced through the process with other finished gasoline without invoking the anti-dumping requirements, e.g., premium grade gasoline could be blended to improve octane.

Gasoline produced which is classified as RFG

In the case of RFG produced from transmix by a transmix processor, the following option is available:

First, the transmix processor must meet the requirements that apply to refiners, including the requirement to meet refiner RFG standards under §§ 80.41 and 80.65(c) (with the limited exception described below), sampling and testing under § 80.65(e), independent sampling and testing under § 80.65(f), record keeping under § 80.74, reporting under § 80.75, and attest engagements under §§ 80.125 through 80.128.

Second, the transmix used must be a combination of distillate and RFG, and may not be a mixture of distillate and conventional gasoline. The transmix processor must obtain documents from the transferor of the transmix which certify the gasoline portion of the transmix is RFG, and must retain these documents in the manner specified under § 80.74.

Third, the transmix processor must meet all RFG standards specified in § 80.41(a) or (b), and the standard for T-90 under § 80.41(h)(2)(i) (in the case of transmix processor with the statutory baseline, an annual average T-90 that is equal to or less than 332 °F). The transmix processor need not meet the simple model standards for sulfur and olefins under § 80.41(h)(2)(i) for the RFG produced from transmix. If the transmix processor uses any blendstocks in addition to the transmix, however, the sulfur and olefin standards must be met for these blendstocks.

The distinction between the treatment of a transmix processor who produces RFG versus conventional gasoline is appropriate because the gasoline produced by a transmix processor is not identical to the gasoline that went into the transmix. The changes in gasoline quality through transmix processing are less critical for conventional gasoline than for RFG.

In the case of RFG produced by a transmix processor following the procedures described in this Answer, however, the RFG will meet all refiner standards which are applicable downstream of the refinery level. Even though a transmix processor who produces RFG is not held to the refiner standard for sulfur and olefins (for which there are no downstream standards), EPA believes a transmix processing operation does cause significant changes in the sulfur and olefin levels from the levels of the RFG portion of the transmix received by the processor.

Transmix Blending

EPA understands that in certain limited situations where transmix cannot be transported via pipeline to a transmix processor, current pipeline industry practice is to add the transmix to gasoline in very small quantities - 0.25 percent or less of the gasoline volume - and to test the resulting gasoline to ensure it remains on-spec.[3] This practice would be treated as illegal blending under the RFG and anti-dumping programs, unless the blender meets all applicable refiner standards and requirements.

In the case of transmix added to conventional gasoline:

First, the transmix must result from normal pipeline operations.

Second, the transmix must be present in a terminal from which there is no out-bound pipeline or water transportation by which the transmix could be transported to a transmix processor,

[3] The transmix is added to gasoline instead of to distillate, because the consequences of any motor vehicle driveability problems resulting from distillate being mixed with gasoline are less serious than the consequences of explosions that could result from gasoline being mixed with distillate.

or the pipeline's historical practice at the terminal (the practice beginning at least before January, 1994) has been to blend all transmix into conventional gasoline without further processing.

Third, the transmix is blended at a rate no greater than the historical rate the pipeline can document was used by the pipeline, and pipeline documents the current rate of transmix blending.

In the case of transmix added to RFG:

First, the transmix must result from pipeline operational necessity.

Second, the transmix must be present in a terminal from which there is no out-bound pipeline or water transportation by which the transmix could be transported to a transmix processor.

Third, conventional gasoline must not be among the slate of products that arrive at the terminal (transmix must be blended with conventional gasoline if possible).

Fourth, the blending rate of transmix to RFG must be no greater than 0.25 percent by volume.

Fifth, the transmix must be blended with RFG in a batch mode, so that a sample may be collected of the entire batch.

Sixth, the transmix-RFG blend must be sampled and tested, and the resulting blend must meet all applicable RFG downstream standards, before any of the blended gasoline leaves the terminal.

Seventh, the pipeline must retain documents that reflect the rate of transmix blending and the results of all testing on the transmix-RFG blend, and must make these documents available to EPA upon request.

As an alternative to blending the transmix in a batch mode with sampling and testing before any of the RFG blended with transmix leaves the terminal, the transmix may be blended with RFG in line provided that the pipeline carries out the following program to ensure the transmix will not cause any adverse environmental consequences.

First, the pipeline must conduct a program of laboratory testing, in which samples of transmix are mixed with RFG to determine the effects of the transmix on the RFG. In this program, the transmix samples must to the greatest extent possible represent the full range of the transmix types that are typically blended by the pipeline, and the RFG must to the greatest extent possible represent the full range of the types of RFG into which transmix will be blended by the pipeline. These different transmixes and gasolines must be blended at the maximum rate of transmix blending the pipeline intends to use, but a maximum of 0.25% transmix by volume.

Second, the RFG must be tested for each RFG parameter (RVP, oxygen, benzene, sulfur, olefins, aromatics, E200, and E300), and the RFG transmix blend must be tested for each of these parameters, using the testing methods specified at § 80.46.

Third, the results of all of the laboratory tests must show that the maximum change in properties of the RFG for any RFG-transmix blend is not more than the ranges specified at § 80.65(e)(2)(i).

Fourth, the pipeline must conduct RFG-transmix blending as described in steps 5 and 6 of the first

RFG-transmix procedure, above, for a period of 30 days, and the results of the blending must show that the maximum change in properties of the RFG for any RFG-transmix blend is not more than the ranges specified at § 80.65(e)(2)(i).

Fifth, the pipeline must conduct monthly tests of the RFG-transmix blended, and the results of the blending must show that the maximum change in properties of the RFG for any RFG-transmix blend is not more than the ranges specified at § 80.65(e)(2)(i).

The procedures outlined above for transmix blending would be applicable to terminals as well as pipelines.(11/12/96)

17. **Question:** Must a terminal be registered as a refinery in order to blend transmix?

Answer: EPA has described procedures for pipelines to blend transmix into conventional gasoline and RFG under certain situations. A pipeline that blends transmix into either conventional gasoline or RFG using the procedures described in these answers will not be treated as a refiner, and therefore will not have to be registered as a refiner or to meet the requirements that apply to refiners. However, if the pipeline fails to comply with the procedures that are specified in the transmix blending answer, EPA will treat them as a refiner and require compliance with the registration and other applicable requirements.(10/3/94)

18. **Question:** Can a transmix processor recover gasoline from transmix and call it conventional gasoline without meeting the requirements that apply to a conventional gasoline refiner, and mix the conventional gasoline with other conventional gasoline?

Answer: In the answer to question IX-B-16 of the July 1, 1994 Question and Answer Document, EPA described procedures for transmix processors to follow when producing conventional gasoline or RFG through the transmix processing. In the case of conventional gasoline produced through the transmix processing, and under the conditions specified in the July 1, 1994 Question and Answer Document, the processor need not meet the requirements that apply to conventional gasoline refiners, and the conventional gasoline produced may be fungibly mixed with other conventional gasoline. A transmix processor who produces conventional gasoline must, however, provide product transfer documents that identify the gasoline as conventional and that contain the statement required under § 80.106(a)(1)(vii), that "[t]his product does not meet the requirements for reformulated gasoline, and may not be used in any reformulated gasoline covered area."(10/3/94)

19. **Question:** Will transmix processors be allowed to "stack" ethanol and exceed the maximum allowable oxygenate content without regard to VOC requirements?

Answer: Transmix processors who produce RFG are considered to be refiners and are required to meet all RFG standards and requirements that apply to refiners for the RFG produced, including the standards for oxygen and the renewable oxygenate. To the extent the RFG produced by a transmix processor contains oxygenate that was part of the transmix when received by the processor, this oxygenate may be used by the processor to meet the oxygen standard. If the oxygenate is renewable (e.g., ethanol in the case of non-VOC-controlled RFG, or ETBE in the case of VOC-controlled RFG), the oxygenate may be included in the transmix processor's compliance calculations for renewable oxygenate. If the amount or type of oxygenate in the transmix is inadequate to meet the oxygen or renewable oxygenate standards, the transmix processor has several options for meeting these standards. If the gasoline contains less than the 1.5 wt% minimum oxygen standard, the transmix processor must add sufficient oxygenate to meet this per-gallon standard. If the 1.5 wt% per gallon minimum is met, but not the 2.0 wt% per gallon oxygen standard, the transmix processor may add additional oxygenate. If the RFG will not be designated as VOC-controlled, then the maximum oxygen content standard is 3.5 wt%. If

the RFG is VOC controlled, the maximum oxygen content standard is 2.7 wt%. Under the substantially similar requirements different oxygenates may be combined up to 2.7 wt% oxygen, which would allow the processor to add ethanol to the gasoline even if the gasoline contains some other oxygenate. If the 1.5 wt% oxygen minimum is met and the transmix processor meets the oxygen standard on average, oxygen credits may be obtained to meet 2.1 wt% oxygen average standard. Renewable oxygenate credits also may be obtained to meet that standard. Lastly, the transmix processor could designate the gasoline produced as conventional gasoline, in which case none of the RFG standards would apply. In all cases, the processor may not exceed the oxygen content maximum for RFG, and for VOC controlled RFG must meet the VOC requirements.(10/3/94)

20. **Question:** In the case of parties who wish to blend butane into RFG or conventional gasoline, what options are available for meeting the testing requirements that apply to this activity?

Answer: The addition of blendstock, including butane, to RFG or conventional gasoline would constitute the production of gasoline, with the result that the blender would be considered a refiner under the RFG and anti-dumping regulations, and would be subject to all standards and requirements that apply to refiners. These requirements include meeting the standards applicable to RFG or conventional gasoline, and every-batch sampling. See the answers to Questions IX-B-5 and -7 in the July 1, 1994 Question and Answer Document. Under §§ 80.65(i) and 80.101(e)(1) the RFG or conventional gasoline with which the blendstock is blended must be excluded from the blender-refiner's compliance calculations. In effect, the RFG standards must be met based on the blendstock properties alone. Under § 80.101(i)(1)(i), refiners who produce conventional gasoline by combining blendstock with previously-certified conventional gasoline may determine compliance with the anti-dumping standards by sampling and testing the blendstock following each receipt of blendstock.

A party who blends butane into gasoline will be treated as complying with the refiner requirements without separately sampling and testing each batch of butane received, provided that:

1) The butane is blended with conventional gasoline only, and not with RFG.

2) If the butane is blended into gasoline that will be used during the period May 1 through September 15, the blender-refiner must sample and test the RVP of the gasoline subsequent to each occasion when butane is blended, and the results of this testing must be equal to or less than the applicable volatility standard, without the application of any enforcement tolerance.

3) The blender-refiner obtains specification documents from the supplier of the butane which include the purity of the butane.

   a) The butane must be commercial grade, 95% pure butane, and must meet the contaminate levels listed in the following table, which must be reflected in the documents obtained from the butane supplier:

      olefins . . . . . ≤ 1.0 vol%
      aromatics . . . . . ≤ 2.0 vol%
      benzene . . . . . ≤ 0.03 vol%
      sulfur . . . . . ≤ 140 ppm

   b) In the alternative, the butane must meet the contaminate levels listed in the following table, which must be reflected in the documents obtained from the butane supplier:

olefins . . . . . ≤ 10.0 vol%
aromatics . . . . . ≤ 2.0 vol%
benzene . . . . . ≤ 0.03 vol%
sulfur . . . . . ≤ 140 ppm

And the blender-refiner must conduct a quality assurance program of sampling and testing the butane obtained from each separate butane supplier to corroborate the supplier's specification documents. The frequency of butane sampling and testing must be one sample for every 65 truck loads of butane, or every 17 rail cars of butane, received from a butane supplier, or one sample every three months, whichever is more frequent. Analysis of the quality assurance samples must demonstrate the butane complies with the purity levels listed in the table under this item 3-b. In the conduct of the quality assurance program, the butane must be sampled according to ASTM D1265, the butane must be analyzed for aromatics, benzene, and olefin levels using ASTM D2163, and for sulfur content using ASTM D2784.

4) The butane supplier's specification documents must be based on sampling and testing of the supplier's stored butane that reflects the properties of the butane that was delivered to the blender-refiner.

5) The blender-refiner must retain copies of all butane supplier specification documents, and the results of all quality assurance sampling and testing, for a period of five years, and must make these documents available for EPA inspection on request.

6) The blender-refiner may use the purity levels specified in item 3, above, in order to include the butane used in the anti-dumping compliance calculations under § 80.101(g), and may treat the butane received during each calendar month as a single, separate batch.

(10/3/94)

21. **Question:** Please correct § 80.69(e)(2)(v) to refer to § 80.65(e)(2)(i) instead of § 80.70(b)(2)(i).

Answer: This reference will be changed in a subsequent rulemaking. (5/9/95)

C. IMPORTER ISSUES

1. **Question:** What is the EPA definition of an importer under the RFG final rule?

Answer: EPA's importer definition is found at 40 CFR § 80.4(r), which states that an importer is "a person who imports gasoline or gasoline blending stocks or components from a foreign country into the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands)." U.S. Customs Service regulations at 19 CFR § 101.1(l) define an importer as the "person primarily liable for the payment of any duties on the merchandise, or an authorized agent acting on his behalf."

To keep operations for EPA and the Customs Service consistent, the person who is the importer of record for the gasoline with the Customs Service should be the importer for purposes of EPA's RFG and anti-dumping programs. Normally this is the person who owns the gasoline when the import vessel arrives at the U.S. port of entry, or the person who owns the gasoline after it has been discharged by the import vessel into a shore tank, but sometimes it is a licensed customs house broker. The Customs

importer of record, whether it is the person who owns the gasoline when it enters the U.S port of entry, the purchaser of the gasoline or the customs house broker, is always responsible for compliance with the RFG and anti-dumping standards and requirements, however.(7/1/94)

2. **Question:** If a terminal receives gasoline that is delivered directly from a foreign source but the operator or owner of the receiving terminal is not the importer of that gasoline, is that terminal still considered to be the import facility? Is it the responsibility of the terminal operator or owner, who is not the importer, to do the testing, certification, recordkeeping, reporting, attest engagements and other functions described as importer responsibilities in the final RFG rules?

Answer: The requirements for certification of RFG are applied to the importer, not the import facility. As described above, the importer is the person who is the importer of record with the Customs Service for the gasoline, and normally is either the person who owns the gasoline when the import vessel arrives at the U.S. port of entry, or the person who owns the gasoline after it has been discharged by the import vessel into a shore tank. A terminal owner or operator who is not the importer would not be responsible for compliance with the testing and certification requirements, but would, however, be responsible for the requirements applicable to distributors.(7/1/94)

3. **Question:** If one company acquires foreign product in transit, then sells it to a second company while still in transit, who is the importer?

Answer: The importer is the party identified above, the party primarily liable for payment of duties for Customs purposes when the gasoline enters the United States.(7/1/94)

4. **Question:** If foreign product is acquired by an importer through an exchange agreement instead of a sale, does it change identification of the importer for RFG reporting purposes?

Answer: No. The person who is the importer of record for Customs purposes should be the importer for RFG purposes, and this is usually the gasoline owner, regardless of how that ownership was acquired.(7/1/94)

5. **Question:** May import facilities be grouped together for compliance and reporting purposes?

Answer: For the most part, separate import facilities owned by one importer must be grouped together. All compliance demonstrations are to be made based on the aggregate of all gasoline imported into the United States by an importer. This provision is found in § 80.67(b)(2) of the final rule. Please see Question 6 below for an explanation of when this general approach does not apply.(7/1/94)

6. **Question:** When are an importer's facilities subject to different RFG standards?

Answer: There is one situation in which importers must demonstrate compliance for individual import facilities instead of aggregating. Under § 80.67(b)(2)(ii), importers must demonstrate compliance separately for the gasoline imported at facilities which are subject to different RFG standards under § 80.41. The RFG standards for a covered area can change, or "ratchet," as the result of a failed gasoline quality survey in that area. When the standards for a covered area are ratcheted, the gasoline imported by an importer into the PADD containing the covered area, or into one of the PADDs supplying the covered area, would have to meet a separate standard. In this situation, the importer would submit separate compliance reports to EPA for gasoline imported into each PADD or group of PADDs with the same ratcheted standard.(7/1/94)

7. **Question:** If an importer has more than two import terminals, may the importer of record elect "per gallon" compliance for some import terminals and "average" compliance for other import terminals, or must

all imported RFG be designated consistently?

Answer: All RFG must be designated consistently. For each of the RFG parameters, an importer must elect compliance on either a per-gallon basis or an average basis. These elections apply to all of the importer's facilities.(7/1/94)

8. **Question**: At what point in the import process must shipments of imported gasoline be sampled in order to meet the RFG and anti-dumping requirements?

Answer: Section 80.65(e)(1) requires importers to determine the properties applicable to the RFG standards for each batch of imported gasoline designated as RFG prior to the gasoline leaving the import facility, by analyzing a representative sample from the batch using the test methods specified in § 80.46. Section 80.101(i)(1) similarly requires an importer to determine the properties applicable to the anti-dumping standards for each batch of imported conventional gasoline by analyzing a sample using the § 80.46 test methods. In the case of conventional gasoline, under § 80.101(i)(2) the samples from more than one batch of conventional gasoline may be combined into a composite sample and analyzed together, following procedures specified in that section.

These sections thus require that a sample of each batch of imported gasoline must be collected before the batch is combined with any other gasoline or blendstock that is not a part of that imported batch. As a result, in order to meet the requirements, any batch of imported gasoline must be sampled before the batch is off-loaded from a ship into a shore tank if that shore tank contains any amount of any product. This is because a sample from such a shore tank would be a mixture of imported gasoline and the other product, and would therefore not be representative of the gasoline that being imported. For these reasons, a sample of each batch of imported gasoline must be collected before the ship is off-loaded at the port of entry. In the case of imported RFG, the independent lab and the importer (if the importer is using the 10% independent analysis option) must collect a sample of the imported gasoline, and it must be determined that the measurements are consistent with certifiable RFG, before the ship is off-loaded.

The different ship compartments normally must be considered different batches of gasoline, because the gasoline may not be homogeneous across multiple compartments. In the case of imported conventional gasoline, composite samples from multiple batches are allowed, so a volume-weighted composite from the gasoline in different compartments of a ship may be analyzed for anti-dumping compliance purposes. The volume of a batch of imported conventional gasoline must be the off-loaded volume, however, and normally would be established by the importer based on shore tank measurements.

In the case of RFG, the importer and independent lab may treat the gasoline in different compartments of a ship as a single batch only if the importer or lab has a strong basis to believe that the gasoline is homogeneous across the compartments, but such a determination would require analysis of the different compartment samples for most of the RFG parameters. The minimum set of parameters that may be used to establish homogeneity are the following: API Gravity, sulfur, benzene, E200, and E300. Only if the different compartments of a ship have the same values for each of these parameters, within the ASTM repeatability range for each parameter, may the gasoline in different ship compartments be considered to be homogeneous.

In the alternative, EPA will accept the analysis of samples collected from different ship compartments that are combined into a single volume-weighted composite sample, provided the compartments are off-loaded into a single shore tank. EPA believes such a composite sample would be representative of the overall quality of the gasoline in the multiple ship compartments, following the mixing of this gasoline in the shore tank. If the gasoline is not completely homogeneous when in the different ship compartments, presumably the gasoline will be mixed to the point of homogeneity in the shore tank.

As a second alternative, EPA will accept the analysis of samples collected from different ship compartments that are combined into a single volume-weighted composite sample, provided that each shore tank into which the imported RFG is off-loaded is also sampled and tested to establish that the imported RFG meets the downstream standards without the application of any enforcement tolerances.[4] Under this approach, any RFG contained in the shore tank before the imported RFG is added (the tank "bottom") must be sampled and tested for the downstream standards using the § 80.46 test methods. After the imported RFG is added to the tank, the entire tank again must be sampled and tested for the downstream standards using the § 80.46 test methods. The volume and properties of the tank bottom must then be subtracted from the post-addition test results, to mathematically determine the levels for the downstream standard
parameters for the imported RFG. Only if these shore tank test results are within the downstream standards without the application of any enforcement tolerance may the ship composite sample be used to certify the imported RFG.

As a third alternative, EPA will accept the analysis of samples collected from different ship compartments that are combined into a single volume-weighted composite sample, provided that each individual vessel compartment is shown, through sampling and testing, to meet all applicable downstream standards without the application of any enforcement tolerance.

The rationale for the second and third alternatives to treating each ship compartment as a separate batch is that these procedures will ensure that even if the gasoline on the ship is not homogeneous, none of the gasoline violates the minimum and maximum standards.

Under either of these alternative approaches, a composite sample would be inappropriate to establish the RVP of imported RFG, because the process of preparing a composite sample renders any RVP result suspect. The importer and independent lab could, however, test a ship composite sample (if allowed as discussed above) for all properties other than RVP, and only separately analyze the compartment samples for RVP. The RVP of the multiple-compartment batch could then be derived mathematically from the separate RVP analyses for each compartment. As in the case of conventional gasoline, the volume of imported RFG must be the off-loaded volume, and normally would be established by the independent lab based on shore tank measurements.

Any imported RFG that is sampled and tested using the composite approaches discussed above would be considered a single batch for purposes of assigning batch numbers and reporting to EPA.

The approaches for testing imported RFG involving composite samples from multiple ship compartments, as discussed above, would not be appropriate if the importer or independent lab has any reason to believe the gasoline will not be homogeneous when released from the import facility. (10/31/95)

9. **Question:** A foreign cargo of RFG is to be imported into several terminals. Can the cargo be certified before discharge at the first U.S. port of entry and that certification used for all subsequent ports of entry, or must it be tested and certified separately at each U.S. port of entry?

Answer: Certification of every batch of imported RFG must occur separately for Customs purposes at <u>each</u> U.S. port of entry. For example, if a vessel goes first to New York to discharge half its

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[4] The RFG downstream standards are the per-gallon maximums or minimums associated with the following average standards: under the simple model, oxygen and benzene, and RVP in the case of VOC-controlled RFG; under the complex model, oxygen, benzene, and NOx emissions performance, and VOC emissions performance in the case of VOC-controlled RFG.

cargo, then proceeds on to Philadelphia to discharge the rest, each half is a separate batch, and each batch is separately imported at each port. Each batch therefore would also be separately tested, certified, and reported as RFG.(7/1/94)

10. **Question:** Must imported RFG be tested at the import facility or may the importer use the test results from a foreign source, or alternatively, from vessel samples secured from the vessel after loading is completed? Many independent labs operate internationally. Also, must all labs be registered with EPA?

Answer: Importers must certify each batch of RFG and conventional gasoline based upon samples collected after the vessel carrying the gasoline has entered the U.S. port of entry where the gasoline will be discharged. Under § 80.65(f)(2)(ii), importers must identify the designated independent laboratory to EPA under the registration requirements found in § 80.76.(7/1/94)

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

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

In addition, when the gasoline on a vessel has been fully certified (each vessel compartment is certified separately, or the homogeneity of the gasoline in the vessel's compartments is established and the vessel's gasoline is certified using a composite sample protocol), the gasoline may be transferred to shore tanks using smaller vessels or barges (lightered) as fully certified RFG or conventional gasoline. These lightering transfers may be to terminals located in any harbor, and are not restricted to terminals located in the harbor where the ship is anchored. For example, certified RFG could be transferred from a ship anchored in New York harbor to a lightering vessel and transported to Albany, New York or Providence, Rhode Island without separately certifying the gasoline upon arrival in Albany or Providence. In this lightering situation transfers to a lightering vessel must meet the product transfer document requirements.(12/5/94)

12. **Question:** What options for meeting the importer requirements are available to an importer who imports gasoline into the United States by truck? How does such an importer meet the every-batch sampling and testing requirements, since every truck (or truck compartment) would be considered a separate batch?

Answer: A party who imports RFG into the United States must meet all importer requirements for each batch of imported RFG, including those involving sampling and testing, independent sampling and testing, record keeping, reporting, and attest, regardless of the mode of transportation for the RFG when imported.

An importer who imports conventional gasoline (but not RFG) into the United States by truck may

meet the importer sampling and testing requirements by:

1. Importing conventional gasoline that meets the anti-dumping standards, specified at § 80.101(b), on an every-gallon basis.

    a. The standards may be met separately for "summer" gasoline and for "winter" gasoline, based on the baseline applicable to the importer for these two periods. Any gasoline with an RVP that is equal to or less than 9.0 psi and is intended for use during the period May 1 through September 15 must be considered "summer" gasoline, and all other gasoline must be considered "winter" gasoline. In the alternative, the standards may be met for all gasoline throughout the year on the basis of the annual baseline applicable to the importer.

    b. In the case of an importer who is subject to the statutory baseline, the "summer," "winter," and annual baseline values are specified at § 80.91(c)(5).

2. Demonstrating that every gallon of imported gasoline meets the anti-dumping standards, through test results from the truck-loading terminal that is the source of gasoline for import into the United States.

    a. The gasoline at the truck-loading terminal must be tested for each applicable parameter specified under § 80.65(e)(2)(i), using the test methods specified under § 80.46.

    b. The importer must obtain a copy of the terminal's test results for each truck load of gasoline that is imported into the United States.

3. Treating each truck load of imported gasoline as a separate "batch" for purposes of assignment of batch numbers under § 80.101(i), record keeping under § 80.104, and reporting under § 80.105, although the batches over a one month period may be combined into a single "batch" under the terms of § 80.101(i)(2).

4. Conducting a program of periodic quality assurance sampling and testing over the gasoline obtained from each truck-loading terminal, to ensure the accuracy of the truck-loading terminal's test results.

    a. The quality assurance samples must be obtained from the truck-loading terminal by the importer, and the date of sample collection must not be known in advance by the terminal.

    b. The importer must test each sample (or use an independent lab to test the sample) for the parameters specified under § 80.65(e)(2)(i) using the test methods specified under § 80.46, and the results must correlate with the terminal's test results within the ranges specified under § 80.65(e)(2)(i).

    c. The frequency of quality assurance sampling and testing must be at least one sample for each fifty trucks loaded by the importer at a terminal, or one sample per month, whichever is more frequent.

5. The importer must include the testing and quality assurance testing specified in this answer in the annual attest engagement, and attest engagement report, required

under § 80.105(c) and §§ 80.125 through 80.130.

6. EPA inspectors or auditors must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(8/29/94)

13. **Question**: What options are available to an importer who wishes to import product that meets the definition of gasoline, but who wishes to further process this gasoline to meet the standards for conventional gasoline or RFG after the gasoline arrives at the U.S. port of entry?

Answer: Under the reformulated gasoline (RFG) final rule an importer must include all imported product that meets the definition of gasoline in the importer's compliance calculations for either RFG or conventional gasoline. If this imported gasoline is then processed by blending with additional blendstock, the subsequent blending constitutes a refinery operation for which all refiner requirements must be met, including refinery standards, refiner sampling and testing, independent sampling and testing in the case of RFG, record keeping, reporting, and attest engagements. Further, the RFG or anti-dumping standards for such an operation must be met solely on the basis of the blendstocks used, and the previously imported (and previously accounted-for) gasoline may not be included. This is true regardless of whether the subsequent blending-refining is conducted by the original importer of the gasoline, or by another party.

A company that is an importer may exclude gasoline imported by that company from the company's importer compliance calculations, provided that the company uses the gasoline as a blendstock in a refinery operated by the company, and includes the gasoline-treated-as-blendstock (GTAB) in the company's refinery compliance calculations. This accounting of GTAB must occur as follows:

1) The GTAB must be included in the compliance calculations for gasoline produced at a refinery operated by the same company that is the importer, for which the company meets all refiner standards and requirements.

2) The importer-company may not transfer title to the GTAB to another party until the GTAB has been used to produce gasoline and all refinery standards and requirements have been met for the gasoline produced.

3) The refinery at which the GTAB is used to produce gasoline must be physically located at the same terminal at which the GTAB first arrives in the U.S. (the import facility), or at a facility to which the GTAB is directly transported from the import facility.

4) The GTAB must be completely segregated from any gasoline, whether conventional or RFG, and including any gasoline tank bottoms, prior to the point of blending, and sampling and testing, in the company's refinery operation. The GTAB may, however, be added to a gasoline blending tank where the gasoline tank bottom is not included in as part of the batch volume for the prior batch. In addition, the GTAB may be placed into a storage tank that contains other GTAB imported by that importer. The GTAB also may be discharged into a tank containing finished gasoline of the same category as the gasoline which will be produced using the GTAB (i.e., conventional gasoline or RFG, and if RFG the same category with regard to VOC control and OPRG) provided the blending process is performed in

that same tank.

5) The company must account for the properties and volume of gasoline produced using GTAB in a manner that excludes the volume and properties of any gasoline that previously has been included in any refiner's or importer's compliance calculations. Thus, if GTAB and blendstock are combined in a storage tank that also contains a tank bottom of gasoline, the tank bottom-gasoline must be the same category as the gasoline which will be produced using the GTAB i.e., conventional gasoline or RFG, and if RFG the same category with regard to VOC control and OPRG. The gasoline tank bottom may not be included in the company's refinery compliance calculations for that batch of gasoline. This exclusion of previously-accounted-for gasoline should be accomplished using the following approach.

   a) Determine the volume and properties of any tank bottom that is gasoline before any gasoline production begins.

   b) Add the GTAB plus any blendstock to the storage tank, and completely mix the tank.

   c) Determine the volume and properties of the gasoline contained in the storage tank after blending is complete. Mathematically subtract the volume and properties of the tank bottom to determine the volume and properties of the GTAB plus blendstock added, which is reported to EPA as a batch of gasoline produced.

   d) All sampling and testing, including the sampling and testing of tank bottoms, must be carried out using the independent sampling and testing provisions at § 80.65(f) if the gasoline being produced is RFG.

   e) In the alternative, a company that has a "blending" tank that is used only to combine GTAB and blending components (and no gasoline is added to the tank), may account for the gasoline produced in such a blending tank by sampling and testing for the properties of the batch after GTAB and blendstock are added and mixed, and reporting the volume of gasoline shipped from that tank, at the analyzed properties, up to the point a new blend is produced by adding new GTAB and blendstock.

6) The finished gasoline produced using the GTAB (including the imported product and any blendstocks blended with the GTAB) must be evaluated for compliance using the baseline that applies to the company in its importer capacity, and not in its refiner capacity. In a case where the gasoline being produced using GTAB is conventional gasoline, the company should use the importer baseline that would apply in the absence of § 80.101(f)(3). The following formulas must be used to

calculate the adjusted refinery baseline where GTAB is used to produce conventional gasoline:

If $(V_{Ref} - V_{GTAB}) > V_B$; then

$$AB_i = \frac{(V_{1990} * RB_i) + (V_{CGTAB} * IB_i) + ((V_a - V_{1990} - V_{CGTAB}) * SB_i)}{V_a}$$

If $(V_{Ref} - V_{GTAB}) < V_B$; then

$$AB_i = \frac{((V_{Conv} - V_{CGTAB}) * RB_i) + (V_{CGTAB} * IB_i)}{V_{Conv}}$$

Where:

AB_i = Adjusted baseline for parameter or emissions performance i.

V_{1990} = 1990 baseline volume for the refinery.

V_a = Volume of RFG, conventional gasoline and RBOB produced at the refinery during the year (averaging period) in question.

V_{RFG} = Volume of RFG and RBOB produced at the refinery during the year in question.

V_{Conv} = Volume of conventional gasoline produced at the refinery during the year in question.

V_{RGTAB} = Volumes of GTAB, and blendstocks combined with GTAB, used to produce RFG at the refinery during the year in question.

V_{CGtab} = Volumes of GTAB, and blendstocks combined with GTAB, used to produce conventional gasoline at the refinery during the year in question.

RB_i = 1990 refinery baseline for parameter or emissions performance i.

IB_i = Baseline for parameter or emissions performance i that applies to the GTAB importer-refiner in its importer capacity.

SB_i = Statutory baseline for parameter or emissions performance i.

The following formula must be used to calculate the adjusted refinery baseline where GTAB is used to produce RFG:

$$AB_i = \frac{(V_{RGTAB} * IB_i) + ((V_{RFG} - V_{RGTAB}) * RB_i)}{V_{RFG}}$$

Note that under 40 CFR §§ 80.81(d) and 80.101(e)(3) RFG and conventional

gasoline used in California subsequent to March 1, 1996, must be excluded from compliance calculations for gasoline used outside California, with the exception that this gasoline is included in the compliance baseline calculations under 40 CFR § 80.101(f)(4).

7) The company must meet all importer sampling and testing requirements that apply to imported gasoline for the GTAB. Consistent with paragraph 4 above, this may be accomplished by receiving GTAB into a storage tank that contains other GTAB that previously had been imported by that importer. In such a case the volume and properties of the GTAB may be determined by subtracting the volume and properties of the GTAB in the tank prior to receipt of the new product, from the volume and properties of the GTAB in the tank subsequent to receipt of the new product.

   In addition, sampling and testing of imported RFG as GTAB may be based on vessel composite samples without regard to whether the gasoline in individual ship compartments separately meets the RFG downstream standards.

8) The company must include the volume and properties of each batch of GTAB in the quarterly importer reports to EPA, but with a notation that the batch is not included in the importer compliance calculations because the product is GTAB. Any GTAB that ultimately is not used in the company's refinery operation (e.g., a tank bottom of GTAB at the conclusion of the refinery operation), must be treated as newly imported gasoline, for which all required sampling and testing, and record keeping must be accomplished, and included in the company's importer compliance calculations for the averaging period when this sampling and testing occurs.

9) The company must retain records that reflect the importation, sampling and testing, and physical movement of any GTAB, and must make these records available to the CPA or CIA attester, or to EPA, on request.

10) The company must require the CPA or CIA who conducts the company's annual attest engagement, pursuant to § 80.65(h) and §§ 80.125 through 130, to specifically review the accounting for each batch of GTAB, to attest that all GTAB was included in the company's refinery compliance calculations in accordance with the procedures specified in this Answer, and to include the details of this review in the attest report.

The following is a hypothetical example to illustrate the calculations which would be used to determine the baselines and compliance for both conventional and RFG for a company (Company A) that operates two domestic refineries and imports gasoline, and that imports product classified as GTAB. In this example, only the sulfur baseline and compliance calculations are included, but the same methodology should be used for the other regulated parameters.

The following table lists Company A's 1990 individual refinery baseline volumes and baseline sulfur levels for Refinery 1 and Refinery 2. Company A also imported 8 units of gasoline in 1990, and under § 80.91(b)(4) Company A's 1990 importer sulfur baseline is the statutory baseline, or 338 ppm.

The following table also lists, for 1995, the volumes and sulfur levels for the conventional gasoline and RFG produced at Refinery 1 and Refinery 2, the volume of GTAB processed, and the volume of non-GTAB imported gasoline and its sulfur level. Each of these volumes and sulfur levels represent a number

of separate batches. In this example Company A transferred all of the imported product classified as conventional and RFG GTAB to Refinery 1 for further processing. In addition, the product blended with the GTAB at Refinery 1 is included in Refinery 1's 1995 conventional gasoline volume of 41 units and RFG volume of 15 units.

	1990 BASELINE		1995	
	Volume	Sulfur	Volume	Sulfur
DOMESTIC REFINERY				
Refinery 1	20	300 ppm		
Conventional			41[1]	310 ppm[1]
RFG			15[2]	275 ppm[2]
Refinery 2	15	315 ppm		
Conventional			18	335 ppm
RFG			7	300 ppm
IMPORTED GASOLINE	8	338 ppm		
Non-GTAB Conventional			10	315 ppm
RFG			4	290 ppm
GTAB Conventional			16[3]	
RFG			3[3]	
STATUTORY		338 ppm		

[1] The Refinery 1 1995 conventional gasoline volume and sulfur content include the non-GTAB volume (25 units) and the GTAB volume processed into conventional gasoline (16 units).

[2] The Refinery 1 1995 RFG volume and sulfur content include the non-GTAB volume (12 units) and the GTAB volume processed into RFG (3 units).

[3] The GTAB volume includes the volume of blendstocks combined with the GTAB to produce gasoline. See paragraph 6, above.

The following set of calculations represents the methodology for determining the compliance baseline, applicable standard, and compliance calculation that would apply to Company A for its importer activity, and for Refinery 1 and Refinery 2. In addition, a separate set of calculations represents the methodology for determining compliance if Refinery 1 and Refinery 2 are aggregated under § 80.101(h).

Imported Gasoline:

Conventional Gasoline --

Calculate the volume-weighted average baseline for Refinery 1 and Refinery 2 in accordance with § 80.101(f)(3), which is necessary for the compliance baseline adjustment for conventional gasoline under § 80.101(f)(4).

$$\textit{Importer Compliance Baseline} = \frac{(20 * 300) + (15 * 315)}{35}$$

$$= 306.4\ \textit{ppm}$$

Calculate the adjusted baseline that applies to conventional gasoline imported by Company A under § 80.101(f)(4) using the volume-weighted average baselines of Refinery 1 and Refinery 2 (306.4 ppm) up to Company A's 1990 import volume (8 units) and a total import volume (V_a) of 14 units.

Under § 80.101(b)(1)(ii) the anti-dumping sulfur standard is 125% of Company A's adjusted compliance baseline for its importer activity.

$$1995\ \textit{Importer Sulfur Standard} = 1.25 * 319.9$$

$$= 400\ \textit{ppm}$$

The average sulfur content of Company A's imported conventional gasoline in 1995 was 315 ppm, which means Company A has met the anti-dumping sulfur standard of 400 ppm in its importer capacity.

Reformulated Gasoline --

The average sulfur content of Company A's 1995 imported RFG is 290 ppm, which means Company A has met the statutory baseline sulfur standard of 338 ppm in its importer capacity.

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Refineries 1 and 2; Not Aggregated:

The following refinery baseline and compliance calculations assume Company A did not aggregate Refinery 1 and Refinery 2 under § 80.101(h).

Refinery 1 (including GTAB):

Conventional Gasoline --

Calculate the sulfur adjusted compliance baseline that applies for conventional gasoline for Refinery 1. Because the total volume of gasoline (RFG, RBOB and conventional) produced during 1995, minus the volume of GTAB and blendstocks added to GTAB is greater than Refinery 1's 1990 baseline

volume, the first equation from paragraph 6 above is used. This equation uses Refinery 1's 1990 baseline for sulfur (300 ppm) and the 1990 baseline volume (20 units); Company A's importer baseline for sulfur exclusive of § 80.101(f)(3), i.e., the statutory baseline, (338 ppm) and the volume of GTAB and blendstocks combined with GTAB to produce conventional gasoline at Refinery 1 (16 units); and the remaining volume of gasoline produced at Refinery 1 (20 units) at the statutory baseline for sulfur (338 ppm).

Under § 80.101(b)(1)(ii) the sulfur standard is 125% of Refinery 1's adjusted compliance baseline.

$$1995\ Sulfur\ Standard = 1.25 * 324.4$$
$$= 406\ ppm$$

The average sulfur content of Refinery 1's conventional gasoline in 1995 was 310 ppm, which means Company A has met the anti-dumping sulfur standard of 406 ppm for Refinery 1.

Reformulated Gasoline --

Calculate the RFG sulfur baseline for Refinery 1 as the volume weighted average of Refinery 1's 1990 baseline sulfur level (300 ppm) for the non-GTAB RFG volume (12 units) and the GTAB volume (3 units) at the importer's RFG baseline (338 ppm).

$$AB = \frac{(12 * 300) + (3 * 338)}{15}$$
$$= 308\ ppm$$

The average sulfur content of Refinery 1's RFG in 1995 was 275 ppm, which means Refinery 1 has met its RFG sulfur standard of 308 ppm.

Refinery 2:

Conventional Gasoline --

Calculate the adjusted sulfur compliance baseline for Refinery 2 under § 80.101(f)(4) using the Refinery 2 1990 baseline sulfur level (315 ppm) for the 1990 baseline volume (15 units) and a total volume (V_a) of 25 units which includes 18 units of conventional gasoline and 7 units of RFG produced at Refinery 2.

Under § 80.101(b)(1)(ii) the sulfur standard is 125% of Refinery 2's compliance baseline.

$$1995\ \textit{Sulfur Standard} = 1.25 * 324.2$$
$$= 405\ \textit{ppm}$$

The average sulfur content of Refinery 2's conventional gasoline in 1995 was 335 ppm, which means Company A has met the anti-dumping sulfur standard of 405 ppm for Refinery 2.

Reformulated Gasoline --

The average sulfur content of the RFG produced at Refinery 2 was 300 ppm, which means Company A has met the RFG sulfur baseline of 315 ppm for Refinery 2.

Refineries 1 and 2 Aggregated (including the GTAB processed at Refinery 1):

Conventional Gasoline --

The following refinery baseline and compliance calculations assume Company A elected to aggregate Refinery 1 and Refinery 2 under § 80.101(h).

Calculate the adjusted sulfur compliance baseline in the aggregate for Refinery 1 and Refinery 2 under § 80.101(f)(4) using the formula provided in step 6 of the protocol described above for both Refinery 1 and Refinery 2.

Under § 80.101(b)(1)(ii), the sulfur standard is 125% of the aggregate compliance baseline.

$$1995\ \textit{Sulfur Standard} = 1.25 * 324.4$$
$$= 405\ \textit{ppm}$$

The 1995 average sulfur level for Refinery 1 and Refinery 2 aggregated is the volume weighted average for the two refineries.

$$\textit{Average Sulfur Content} = \frac{(41 * 310) + (18 * 335)}{59}$$
$$= 318\ \textit{ppm}$$

The average sulfur content for Refinery 1 and Refinery 2 aggregated is 318 ppm, which means that Company A has met the conventional gasoline standard for sulfur of 405 ppm for these refineries when aggregated for 1995.

Reformulated Gasoline --

Under § 80.41(h)(2)(iii) Company A must achieve compliance for the average sulfur, T-90, and olefins of the RFG produced using the same refinery aggregation as is used for conventional gasoline. Therefore, first calculate the volume-weighted average sulfur baseline for Refinery 1 and Refinery 2.

$$\textit{Aggregate Sulfur Baseline} = \frac{(20 * 300) + (15 * 315)}{35}$$

$$= 306\ \textit{ppm}$$

Calculate the RFG sulfur standard as the volume-weighted sulfur baseline for Refinery 1 and Refinery 2 (306 ppm) at the 1995 non-GTAB RFG volume for Refinery 1 (12 units) plus the RFG volume for Refinery 2 (7 units), and the importer baseline (338 ppm) at the volume of GTAB plus blendstocks added to GTAB processed into RFG (3 units).

$$\textit{RFG Sulfur Baseline} = \frac{((12 + 7) * 306) + (3 * 338)}{22}$$

$$= 310\ \textit{ppm}$$

Calculate the average sulfur content of the RFG produced at Refinery 1 and Refinery 2.

$$\textit{Average Sulfur Content} = \frac{(15 * 275) + (7 * 300)}{22}$$

$$= 283\ \textit{ppm}$$

The average sulfur content of the RFG produced at Refinery 1 and Refinery 2 is 283 ppm, which means Company A has met the RFG sulfur standard of 310 ppm for Refinery 1 and Refinery 2. (11/12/96)

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

Answer: An imported product that meets the definition of gasoline may be classified as GTAB by the importer if the conditions specified in the August 29, 1994 Question and Answer document are satisfied, regardless of whether the gasoline meets the commercial or regulatory standards for RFG or conventional gasoline when imported. As a result, imported product that meets the definition of gasoline (i.e., meets commercial specifications for octane, etc.) and meets all importer RFG or anti-dumping standards, may be classified as GTAB and blended with blendstocks by the importer provided the importer meets all the GTAB conditions. For example, in a case where the product produced using GTAB is RFG, and where the benzene content of the imported product is less than 1.00 vol% and the importer in question is meeting the benzene standard on a per-gallon basis, additional benzene may be blended with the imported product up to the 1.00 vol% per gallon benzene standard for RFG.(12/5/94)

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

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

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

Any refiner who includes in refinery compliance calculations gasoline that has been exported because the gasoline will be classified as American Goods Returned to the U.S., or any importer who excludes from the importer standards and requirements gasoline that has been so classified, should retain copies of all documents submitted to, or issued by, the U.S. Customs Service regarding this classification of the gasoline.(10/31/95)

X. EXEMPTIONS UNDER § 325(a)(1)

1. **Question:** Will EPA consider exempting Guam or the Northern Mariana Islands from the RFG/Anti-dumping regulations pursuant to § 325(a)(1) of the Clean Air Act, subject to a request from the Governor of these territories?

Answer: Section 325(a)(1) of the Clean Air Act (Act) provides that, upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator of EPA may exempt any person or source (or class of persons or sources) in such territory

from any requirement under the Act[5] if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Accordingly, before EPA can consider exempting Guam or the Northern Mariana Islands from the RFG/Anti-dumping regulations, a petition must be submitted to EPA by the Governor of the territory detailing why compliance is not feasible or is unreasonable due to factors unique to the territory.

[5]Other than section 112 or any requirement under section 110 or part D necessary to attain or maintain a national primary ambient air quality standard.