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**RFG/Anti-Dumping  
Questions and Answers  
October 17, 1994**

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

## **RFG/ANTI-DUMPING QUESTIONS AND ANSWERS, OCTOBER 17, 1994**

The following are responses to most of the questions received by the Environmental Protection Agency (EPA) through October 3, 1994, concerning the manner in which the EPA intends to implement and assure compliance with the reformulated gasoline and anti-dumping regulations at 40 CFR Part 80. This document was prepared by EPA's Office of Air and Radiation, Office of Mobile Sources, and Office of Enforcement and Compliance Assurance, Office of Regulatory Enforcement, Air Enforcement Division.

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

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

While we have attempted to include answers to all questions received by October 3, 1994, the necessity for policy decisions and/or resource constraints may have prevented the inclusion of certain questions. Questions not answered in this document will be answered in a subsequent document. Questions that merely require a justification of the regulations, or that have previously been answered or discussed either in a previous Question and Answer document or the Preamble to the regulations have been omitted.

### **Topics Covered**

RFG General Requirements  
Downstream Oxygenate Blending  
Renewable Oxygenates Program  
Registration/Recordkeeping/Reporting  
Product Transfer Documentation  
California Enforcement Exemption  
Anti-Dumping Requirements

## **RFG GENERAL REQUIREMENTS**

1. **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.

## **DOWNSTREAM OXYGENATE BLENDING**

1. **Question:** The answer to Question 10, Section VI.F., of the July 1, 1994 Question and Answer document states that RFG produced by adding oxygenate to RBOB in the compartment of a truck is one batch and that each compartment must be given a different batch number. Isn't this answer inconsistent with § 80.69(c), which states, "other than a truck delivering gasoline to retail outlets or wholesale purchaser consumer facilities?" This section indicates that the retail delivery trucks are not included in the same class as storage tanks. Also, neither § 80.69(d) nor § 80.69(e) require designation of compartments or even truck loads as separate batches and only sampling and oversight are required under § 80.69(e).

**Answer:** EPA's response in the July 1, 1994 Question and Answer document does not alter the requirements of the reformulated gasoline regulations. The term "batch" is used consistently and appropriately with regard to the regulations. The truck batch numbering requirement discussed in Question 10, Section VI.F., of the July 1, 1994 Question and Answer document applies to truck oxygenate blenders who meet the oxygen standard on average in accordance with § 80.69(b)(4). See also Question 26, Section VI.H. of the July 1, 1994 Question and Answer document for further discussion of this issue.

2. **Question:** If RBOB and oxygenate are blended upstream from the truck in an oxygenate blending facility, which of these parties would be considered an oxygenate blender and have the associated regulatory requirements:

- A. Terminal owner (if different than operator)
- B. Terminal operator (not product owner)
- C. Product owner (in tankage)
- D. Customer-exchange partner (ownership transfers at rack spiller)
- E. Truck owner (common carrier)

**Answer:** An oxygenate blender is defined at § 80.2(mm) as "any person who owns, leases, operates, controls, or supervises an oxygenate blending facility, or who owns or controls the blendstock or gasoline used or the gasoline produced at an oxygenate blending facility." An oxygenate blending facility is defined at § 80.2(ll) as "any facility (including a truck) at which oxygenate is added to gasoline or blendstock, and at which the quality or quantity of gasoline is not altered in any other manner except for the addition of deposit control additives." Therefore, in the scenario described above, where the gasoline is blended by the terminal upstream from the truck, the terminal would be the oxygenate blending facility and both the owner and operator of the terminal facility would be oxygenate blenders under the regulations. The product owner also would be an oxygenate blender. The customer-exchange partner would be an oxygenate blender if ownership of the product is transferred to him immediately upon blending as the product enters the truck. In this scenario, the customer-exchange partner would own the gasoline at the point where sampling and testing would normally occur, and, therefore, would be in a position to ensure that this is accomplished. The truck owner would not be an oxygenate blender where the truck driver exercises no control over the blending operation, and the truck is not an oxygenate blending facility. The truck owner, however, would be a common carrier under the regulations, subject to carrier liability and defenses.

3. **Question:** A company wishes to blend RFG containing ethanol with RFG containing an ether, such as MTBE. May this blending occur during the VOC-controlled season? During the non-VOC-controlled season?

**Answer:** Under § 80.78(a)(8), and as explained in the answer to Prohibitions Question 1 in the September 26, 1994 Question and Answer Document, RFG may not contain a mixture of ethanol and any other oxygenate during the VOC control season (June 1 through September 15 at the retail level). This precludes mixing ethanol-based RFG with RFG containing other oxygenate during the VOC control season and during the period retail tanks are being blended to meet the VOC control standards in advance of June 1. In fact, § 80.78(a)(8) prohibits mixing VOC controlled RFG containing ethanol with any VOC controlled RFG containing any other oxygenate between January 1 and September 15.

Outside the VOC control season, RFG is subject to the oxygen maximum standard of 3.5 weight % oxygen. In addition, all gasoline, including RFG, is subject to the substantially similar requirements, which prohibits gasoline from containing mixtures of ethanol and other oxygenates where the total oxygen content is greater than 2.7 weight %. The substantially similar restriction (unlike the § 80.78(a)(8) prohibition) is not violated at the retail level, however, if an impermissible mixture results from deliveries to the retail outlet of different gasolines each containing legal types and amounts of oxygenate.

4. **Question:** Must oxygenate be added to RBOB downstream of the refinery?

**Answer:** Yes. Oxygenate must be added to RBOB in the proper type and amount regardless of where it is sold. Specifically, section 80.77(a)(7) prohibits any person from combining RBOB with any other gasoline, blendstock, or oxygenate except oxygenate of the type and amount specified for the RBOB type or with other RBOB that has the same requirements related to oxygenate type and amount.

Furthermore, the RFG regulations contain other relevant and specific prohibitions on the transfer and blending of RBOB. Section 80.69(a) requires that refiners and importers only transfer RBOB to downstream oxygenate blenders who are registered with EPA under the RFG program or, if to an intermediate owner, with the restriction that such owner transfer the RBOB only to a registered blender. Section 80.69(b) requires downstream oxygenate blenders to add oxygenate in the proper type and amount to all gasoline designated as RBOB.

## **RENEWABLE OXYGENATES PROGRAM**

1. **Question:** What constitutes a renewable oxygenate?

**Answer:** EPA's reformulated gasoline regulations define the class of oxygenates which qualify under the renewable oxygenate requirements. In general, an oxygenate is considered renewable if it is "derived from non-fossil fuel feedstocks," or is an ether that is produced using an oxygenate that is renewable. [40 C.F.R. Section 80.83(a)(1)] An oxygenate is considered derived from non-fossil fuel feedstocks only if it is (1) derived from a source other than petroleum, coal, natural gas, or peat, or (2) derived from a product produced using these fossil fuels, if certain conditions have been met such as substantial transformation of the fossil fuel; production, sale, and use of the product for a use other than energy generation; and later treatment as a waste product. [40 C.F.R. Section 80.83(a)(5)(i) and (ii)]

The basic purpose of the renewable oxygenate program is to promote the use of oxygenates produced from an energy source other than fossil fuels, thus leading to reductions in the overall use of fossil fuels in the production of reformulated gasoline. The above definition of renewable oxygenate was fashioned to meet this basic purpose. With this in mind, EPA believes that an oxygenate is renewable under §80.83(a) only if all of the fuel feedstocks from which it is derived are from sources other than petroleum, coal, natural gas, or peat. There are two regulatory exceptions to this. One involves ethers, which are considered renewable if they are produced using a renewable oxygenate, even if fossil fuel feedstocks are also used in transforming the renewable oxygenate into an ether form. For example, a renewable ether could be produced from a renewable alcohol and the fossil-based iso-butylene. This exception is permitted because the same amount of renewable alcohol is used regardless of whether it is blended directly, or first transformed into an ether. The second exception involves use of products such as waste automobile tires or landfill gas as a fuel feedstock, if all of the conditions of section 80.83(a)(5)(ii) are met. This exception is permitted because it relies on post-consumer recycled materials to produce the oxygenate, and in so doing displaces the use of fossil fuels for oxygenate production.

This interpretation will best promote the purpose of the renewable oxygenate program because it emphasizes the use of renewable sources of energy to replace fossil fuels. Treating oxygenates as renewable only if all of the fuel feedstocks from which it is produced are non-fossil fuel (except as provided in the two cases noted above) will tend to maximize the impact of this program on the increased the use of renewable sources of energy, and will avoid the administrative problems of establishing and enforcing a minimum required amount of non-fossil fuel feedstocks.

**2. Question:** What constitutes a non-fossil fuel feedstock?

**Answer:** For the purposes of the renewable oxygenate program, and in keeping with the goal of promoting reductions in fossil fuel use in reformulated gasoline, non-fossil fuel feedstocks are those other than petroleum, coal, natural gas, and peat, and which contribute materially to the energy content of the resulting oxygenate. Based on these provisions, the use of compounds or mixtures such as carbon dioxide (CO<sub>2</sub>), water, or air, regardless of their source, are not considered to be fuel feedstocks (either fossil or non-fossil) under §80.83(a) for the purposes of producing renewable oxygenates. Regardless of the source (refinery processes, ethanol production processes, or others), CO<sub>2</sub>, water, or air do not provide any appreciable energy to the resulting oxygenate.

For example, in the case of methanol produced from waste CO<sub>2</sub> and hydrogen, all of the energy in the methanol would be derived from the hydrogen. Unless the hydrogen itself were produced from renewable resources, the production of methanol in this manner could never save fossil energy and merely transforms nonoxygenated fossil energy into an oxygenated form. If, however, the hydrogen were produced from a non-fossil fuel source (e.g., via electrolysis), the methanol produced using waste CO<sub>2</sub> would qualify as a renewable oxygenate.

Similarly, although the oxygen for higher alcohols [such as tertiary butyl alcohol (TBA) and tertiary amyl alcohol (TAA)] which are co-products of the ETBE production process comes from water, the water has no energy value and thus, like CO<sub>2</sub>, does not constitute a fuel feedstock under §80.83(a). The energy value of the higher alcohols produced in this manner comes from iso-olefins, which originate from fossil feedstocks. Hence, higher alcohols coproduced with ETBE in this manner would not count as renewable oxygenates. If the iso-olefins were renewable, however, then the higher alcohols would be considered renewable. (In any case, however, they would count towards the minimum oxygen content for reformulated gasoline; see the next question for further detail.)

**3. Question:** What is the maximum allowable ethanol content of gasoline as it leaves the refinery, and how does unreacted ethanol in ETBE count towards the ROXY requirements?

What is the maximum allowable level of co-produced TBA and TAA in reformulated and conventional gasoline?

**Answer:** Under section 211(f) of the Clean Air Act, fuels and fuel additives are prohibited from use if they are not "substantially similar" to certification fuels. EPA has interpreted "substantially similar" for unleaded gasoline at 56 FR 5352 (February 11, 1991). These provisions permit the use of oxygenates (other than methanol) up to 2.7 weight percent oxygen. The Act also allows the Administrator to waive the "substantially similar" prohibition under certain circumstances. Ethanol has been granted a waiver to allow up to 10 volume percent ethanol in unleaded gasoline. However, at ethanol levels covered by the waiver, but higher than the 2.7% oxygen limit under the "substantially similar" definition, other oxygenates cannot be purposefully added. (For example, a blend of ethanol and ETBE at 2.8 weight percent oxygen is not allowed.) In addition, under the simple model, RFG can have a maximum oxygen content of 2.7 weight percent in the case of RFG that is VOC-controlled and 3.5 weight percent in the case of RFG that is not VOC-controlled.

Beyond these restrictions, there are no other provisions concerning "unreacted" ethanol or "coproduced" alcohols which enter the fuel upon the addition of ETBE. Hence, unreacted ethanol would count towards the minimum RFG and OPRG oxygen requirements. To the extent that the higher alcohols are not produced from renewable feedstocks, they would not count towards the ROXY requirements, although they would count towards the minimum oxygen requirements.

EPA's regulations provide that unreacted ethanol would only count as a renewable oxygenate in the winter months [see 40 CFR 80.83(a)(2)]. This is because the problems associated with the use of ethanol blends (e.g., commingling), which were the basis for the winter-only requirement, would still be present with the use of even small volumes of ethanol combined with other oxygenates. The reader is reminded that only refiners and importers can claim credits for the use of renewable oxygenates; blenders are not eligible under the provisions of the renewable oxygenate requirement.

4. **Question:** May a party who complies with the RFG oxygen standard on a per gallon basis comply with the ROXY standard on an "averaging" basis? May such a party buy, sell, generate, and/or trade ROXY credits?

**Answer:** Yes, to both parts of the question. The ROXY standard is an averaging standard and all parties must show compliance on a calendar year average basis. All refiners and importers of RFG are required to comply with the ROXY standard, and may buy, sell, generate, and/or trade ROXY credits, provided the applicable provisions regarding RFG credit trading and the legitimacy of credits are met. Refiners and importers do not have to specifically designate that the ROXY standard will be met on average.

5. **Question:** Explain why downstream oxygenate blending of ROXY can only be counted by the refiner via transfer of oxygen credits?

**Answer:** The intent of § 80.83(b)(3)(ii) is to make clear that the oxygen standard may be met by a refiner through oxygenate (or renewable oxygenate) blended by downstream blenders only through the transfer of oxygen credits. This must be distinguished from ROXY credit generation.

Specifically, renewable oxygenate properly blended by the downstream oxygenate blender will "automatically" result in ROXY that the refiner or importer may include in his ROXY compliance calculations. The amount of ROXY credit a refiner or importer can claim depends on whether they assume the amount specified in § 80.83(c) or whether they meet the contractual oversight and other requirements of § 80.83(e), and can, therefore, claim the actual amount of ROXY. (Refiners and importers may generate and use ROXY credits, but downstream blenders may not.) In order to count that same renewable oxygenate in the refiner's oxygen compliance calculations, the downstream oxygenate blender must average, generate credits, and transfer those oxygen credits to the refiner. (Downstream blenders may generate oxygen, but not ROXY, credits.)

6. **Question:** May renewable oxygen credits be generated through reformulated gasoline sold in conventional gasoline areas?

**Answer:** As explained in greater detail in the preamble to the final ROXY regulation, EPA intended and expected that the 15%/30% renewable requirement would be met with the sale of RFG in designated reformulated gasoline areas (with some reasonable spillover anticipated). This would tend to maximize the new use of renewables. EPA did not intend to give credit to renewable use in conventional areas that would otherwise be using renewables, and in fact, the one year phase-in was designed to minimize disruption to current and future markets for renewables. While the regulations do not prohibit the sale of RFG outside the covered areas, EPA did not expect this to affect the expected use of ROXY in RFG covered areas.

This regulatory intent would not be achieved if ROXY credit generation was to happen in existing conventional fuels markets using renewables and not in the new RFG markets as intended under the regulation.

EPA plans to monitor the use of ROXY in RFG closely and if it finds that the intent of the ROXY program is not being met, it may take further action (which may include, among other measures, the imposition of stringent tracking requirements) to ensure that the full benefits of the ROXY program are realized in RFG areas.

## **REGISTRATION/RECORDKEEPING/REPORTING**

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



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

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

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

## **PRODUCT TRANSFER DOCUMENTATION**

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

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

2. **Question:** As a trading company actively involved in gasoline blending and classified as a "refiner" under EPA regulations, will blendstock accounting and/or transfer documents be required should a purchased blendstock be resold to a true refiner or other blender? If so, will the transfer document from the original supplier be forwarded or a new original be required?

**Answer:** Under §§ 80.102(a)(1) and (e)(2)(i), blendstock tracking and accounting only involves blendstock that is produced or imported by the refiner or importer. As a result, a company that purchases blendstock that has been produced or imported by another refiner or importer, and who resells that blendstock, would not have to track or account for that blendstock.

If the purchased blendstock was produced by a refiner who is required to account for blendstocks under § 80.102(e)(2), however, § 80.102(e)(2)(ii) requires the blendstock to be accompanied by product transfer documents that identify the blendstock as having previously been accounted for, using the language specified under § 80.106(b). In addition, under

§ 80.106(b), all transfers of such a blendstock must include the language specified in that subsection. As a result, a trading company in receipt of "accounted for" blendstock must include the § 80.106(b) language if this blendstock is transferred to anyone else.

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

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

1) The normal business practice of the parties is to list only the names of the transferor and/or the transferee;

2) Both the transferor and the transferee know and have records of the required addresses; and

3) The addresses are provided to EPA upon request.

4. **Question:** Would it be permissible, as discussed in Question 2, Section VI.I., of the July 1, 1994 Question and Answer document, to send a manual to downstream parties detailing the minimum and maximum values and requirements of each standardized product code (including different product codes for the difference minimum and maximum standards that would apply in the event of "ratcheted" standards), provided that the actual pipeline ticket contained all the verbiage required by § 80.106(a)(1)(vi) for conventional gasoline and § 80.106(b) for blendstock? Question 4 in the PTD section of the August 29, 1994 Question and Answer document seems to put this in doubt. Could you please clarify the point for us?

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

regarding the use of product codes where the information is transferred electronically using electronic data interchange (EDI) for transfers of title.

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

**Answer:** The transferor must provide PTD information to both the transferee of custody and the transferee of title. As a result, the required PTD information must be provided to both the carrier (the transferee of custody) and the exchange partner (the transferee of title). If the exchange partner is receiving both custody and title of the fuel (when utilizing their own trucks as opposed to common carrier trucks), the PTD information would only have to be provided to the exchange partner a single time.

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

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

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

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

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

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

8. **Question:** We interpret the requirement to include a refiner or blender's registration number on the transfer document to apply on transfers where the refiner or blender is the transferor, but not when the transferee. Please confirm that when a pipeline transfers product to a terminal that is owned by a company registered as a refiner or blender, but the terminal is strictly a distributor, that the registration number of the refiner or blender does not have to be on the PTD. Also please confirm that, for receipts from refineries, the required number is the company's registration number, not the facility ID.

**Answer:** Section 80.77(j) requires that the PTD's contain the registration number of both the transferor and transferee, if they are refiners, importers or oxygenate blenders. Accordingly, if a terminal belonging to a refiner or blender is receiving RFG, the refiner's or blender's company registration number should be included in the PTD information. Basically, if either the transferor or transferee is covered under a company registration number, then that company's registration number (not the facility ID) should be included in the documentation.

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

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

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

**Answer:** PTD's are not required when conventional gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility. EPA intends to amend the regulations to reflect this.

**[Note: The following is an update for the answer to Question 2, Section VI.I., of the July 1, 1994 Question and Answer document, to revise the interpretation of the requirement to include product transfer document language where the required PTD information is included in an electronic data interchange transmission.]**

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

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

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

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

## **CALIFORNIA ENFORCEMENT EXEMPTION**

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

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

## ANTI-DUMPING REQUIREMENTS

1. **Question:** For conventional gasolines, the annual compliance report is based on all gasolines. Can one monthly composite be made up of all grades of gasolines and all seasons produced in that month, rather than one composite for each grade and season when compliance is demonstrated with the simple model? the complex?

**Answer:** For the criteria for using composite samples for compliance calculations, see § 80.101(i)(2).

2. **Question:** The preamble to the final rule states that "oxygenate added to a refiner's or importer's gasoline or blendstock downstream of the refinery or import facility may be included in the refiner's or importer's compliance calculations only if the refiner or importer is able to demonstrate with certainty that the oxygenate has been added to that party's gasoline." The preamble further states that "as a result of the complexities inherent in tracking gasoline through the fungible distribution system, EPA believes in most cases it will be impracticable for refiners or importers to effectively monitor downstream oxygenate blending with gasoline that is shipped fungibly, and as a result the refiner or importer normally would be precluded from the oxygenate in compliance calculations".

The scenario in question is:

- o a refiner ships conventional gasoline produced by the refiner through a common-carrier pipeline;

- o batch shipments allow for tracking of the refiner's gasoline within the pipeline;
- o shipments are received into the refiner's storage;
- o these receipts might be commingled fungibly with conventional gasoline produced by another refiner;
- o oxygenate is added at the rack into all of the fungible gasoline.

a) Can the refiner gain oxygen credits for anti-dumping compliance for a prorata share of the oxygenate added to all gasoline, on the basis of the proportion of gasoline blended that was produced by the refiner?

b) Is the refiner's ability to gain oxygen credits impacted, in any way, by the configuration of the common-carrier pipeline (e.g. breakout tanks, batch versus open-stock system, etc.)?

c) Is the refiner's ability to gain oxygen credits impacted, in anyway by the configuration of the refiner's storage (e.g., dedicated versus community, etc.)?

d) Could the accounting be done on a monthly basis, or would the refiner have to track the ratio of gasoline produced by the refiner versus that produced by another refiner after each batch?

**Answer:** a) Yes, provided there is sufficient documentation to calculate the proportion of gasoline produced by the refiner, and, all other requirements of §80.101(d)(4)(ii) are met.

b) The configuration would have to be such that the refiner could, indeed, track the proportion of gasoline used in the oxygenate blend that was produced by the refiner.

c) Same as b).

d) The refiner would have to track the ratio of its gasoline to that produced by another refiner for each batch of oxygenate blend produced.

3. **Question:** Section 80.101(d)(3) states that "Any refiner for each refinery, or any importer, shall include in its compliance calculations. . . any gasoline blending stock produced or imported during the averaging period which becomes conventional gasoline solely upon the addition of an oxygenate." Should the volume reported to the EPA be the blendstock volume or the volume after the addition of the oxygenate (blendstock + oxygenate)?

**Answer:** Under § 80.101(d)(3), the refiner or importer must include in its compliance calculations the volume of gasoline blending stock that was used in the production of conventional gasoline produced solely upon the addition of oxygenate, and not the volume of gasoline after the addition of the oxygenate. However, under § 80.101(d)(4)(i), the refiner or importer should separately include in its compliance calculations the oxygen added by the refiner

or importer. For gasoline produced downstream of the refinery or import facility, if all of the requirements of § 80.101(d)(4)(ii) are met, the refiner or importer may separately include in its compliance calculations the volume of oxygenate that was added to produce the gasoline downstream.

4. **Question:** If a refiner elects to use composite sampling and testing as provided for in the regulations, may the refiner use composite sampling for one parameter and perform the required tests for the other relevant properties?

**Answer:** Section 80.101(i) requires refiners to separately sample each batch of gasoline and blendstocks that are included in anti-dumping compliance calculations, and either separately analyze each sample, or under § 80.101(i)(2), analyze a volume-weighted composite of the samples collected up to a one month period. It would be appropriate to separately analyze the individual batch samples for certain parameters, and to analyze composite samples for those same batches for other parameters. If this approach is used, however, each batch should be reported separately to EPA, by using the individual batch analyses for those parameters separately analyzed and assigning the composite analysis result for composite parameters to all batches included in the composite sample.

5. **Question:** For a conventional gasoline refiner that has oxygenate added downstream of the refinery, what sampling frequency and test methods must be used?

**Answer:** For a refiner of blending stock to include in its compliance calculations the oxygenate used in blending conventional gasoline where the downstream blending was conducted by a person other than the refiner, § 80.101(d)(4)(ii)(B)(2) requires (among other things), that the refiner conduct "periodic sampling and testing of the gasoline produced subsequent to oxygenate blending." The frequency and test methods are not specified in the regulations. However, for any quality assurance testing program under the RFG and anti-dumping regulations, if test methods other than the regulatory test methods are used, adequate correlation to the regulatory test methods must be demonstrated. The frequency of testing under any quality assurance program will depend upon the nature of the specific operation, taking into account all factors, such as prior testing results and opportunity for violations to occur. For further discussion of the what constitutes adequate periodic sampling and testing for a quality assurance program, see Question 11, VII.B., of the July 1, 1994 Question and Answer document.

6. **Question:** Assume that a marketer/supplier has conventional gasoline inventory in a fungible pipeline/terminal system in a non-RFG area. Effective January 1, 1995, does this company have any responsibility for the quality of that inventory? Responsibility for product brought in after January 1, 1995? What does the company need to put in its contract with a refinery/trader or collect from a refinery/trader to comply with the anti-dumping regulations? What kind, if any,



quality assurance program would be required? Would the answers be different if a segregated tank is involved?

**Answer:** Beginning January 1, 1995, all conventional gasoline must meet the PTD requirements. If the conventional gasoline was produced before January 1, 1995, the refiner may not have initiated the PTDs, but the downstream party nevertheless must include the required information when title or custody is transferred. Whether the marketer/supplier has conventional gasoline in a fungible pipeline/terminal or in segregated tankage, it would have to ensure that the conventional gasoline is not delivered into a reform area. The company does not need to have anything in its contract with respect to anti-dumping, unless it is blending oxygenate that would be counted by the refiner. See requirements under § 80.101(d)(4). Quality assurance would include checking PTD's for refiner reform/conventional designation and ensuring that conventional gasoline is not delivered into any RFG covered area.

**7. Question:** In the case of a refiner whose conventional gasoline is blended with oxygenate downstream of the refinery, and where the refiner includes this oxygenate in its anti-dumping compliance calculations, what options are available to the refiner for defining the volume and properties of this oxygenate. In particular, must the refiner report each occasion when the oxygenate is blended (each truck in the case of splash blending), or may the refiner report the total volume and properties of oxygenate used over a larger period of time?

**Answer:** Under § 80.101(d)(4)(ii)(A), a refiner may include in its refinery anti-dumping compliance calculations the oxygenate added downstream to gasoline produced at that refinery, if the oxygenate is added by the refiner. In addition, under § 80.101(d)(4)(ii)(B), the refiner may include oxygenate added downstream to the refinery's gasoline by someone else provided the refiner: 1) has a contract with that oxygenate blender that specifies appropriate oxygenate blending procedures; 2) monitors the oxygenate blending operation through periodic audits designed to assess the overall volume and type of oxygenate used; 3) conducts periodic sampling and testing of the gasoline produced; and 4) conducts periodic inspections to ensure the contractual requirements are being met. Under § 80.104(a)(2)(x) refiners are required to maintain records of the oversight required by § 80.101(d)(4)(ii)(B).

Section 80.101(i) requires refiners to separately sample each batch of gasoline and blendstocks that are included in anti-dumping compliance calculations, and either separately analyze each sample, or under § 80.101(i)(2) analyze a volume-weighted composite of the samples collected during up to a one month period. These sampling and analysis requirements thus apply to oxygenate added downstream to a refiner's gasoline where the refiner includes the oxygenate in its compliance calculations.

In the case of compliance under the complex model, the calculation method necessary to include blendstocks in anti-dumping compliance calculations are described in the Preamble to the RFG Final Rule, 59 FR 7806 (February 16, 1994). This calculation method would apply to

downstream-blended oxygenate that included in a refiner's compliance calculations under the complex model.

A refiner may include in its refinery compliance calculations the oxygenate added downstream to that refinery's gasoline without separately sampling each batch of oxygenate blended, provided the refiner meets the following requirements:

1. The refiner must comply with the downstream oxygenate blending oversight requirements specified under § 80.101(d)(4)(ii), and the recordkeeping required by § 80.104(a)(2)(x).
2. The refiner's oversight must demonstrate the type and amount of oxygenate that is blended with gasoline produced at the refinery.
3. Each type of oxygenate blended must be reported separately.
4. The oxygenate blended during a maximum of one month may be reported as a single batch.

8. **Question:** In the case of oxygenate added downstream to a refinery's gasoline, what assumptions can the refiner make about the composition of ethanol? Is the refiner required to test the ethanol for its relevant properties?

**Answer:** Refiners who include in refinery compliance calculations the ethanol added downstream to the refinery's gasoline may assume that denatured ethanol is used, and that the denaturant comprises 5 vol% of the denatured ethanol. Such a refiner may assume that the remaining 95 vol% of the denatured ethanol is pure ethanol, with the normal properties for that product. The refiner may include the 95 vol% ethanol in its compliance calculations, but not the 5 vol% denaturant. These assumptions would not be appropriate in a case where a refiner learns through its oversight program, or otherwise knows or should know, that these assumptions are inaccurate with regard to a specific oxygenate blending operation.

A refiner may use a different vol% ethanol in its compliance calculations, and may include the volume and properties of denaturant, where the refiner has data to establish the actual volume and properties of the ethanol and denaturant used.

9. **Question:** In the case of a company that did not import applicable blendstocks from 1990 through 1994, but begins to do so in 1995, must the company report those blendstocks as an importer in accordance with the requirements of § 80.102? Does the answer change if the company also is a domestic refiner, and uses the imported blendstocks to produce conventional gasoline?

**Answer:** Section 80.102 requires refiners and importers to track the volume of certain blendstocks that are produced or imported (blendstock tracking), and under certain circumstances to include in anti-dumping compliance calculations all blendstocks produced or imported (blendstock accounting). Under § 80.102(f)(1)(i), however, neither blendstock tracking nor accounting is required for refiners or importers who have a baseline that is less stringent than the statutory baseline for the parameter or emissions performance in issue.

If the company described in the question has an importer baseline that is less stringent than the statutory baseline, therefore, the company may import any types of blendstocks in any volumes without constraint imposed by the RFG or anti-dumping regulations. If, on the other hand, this company has an importer baseline that is equal to or more stringent than the statutory baseline, the company would be subject to blendstock tracking (and blendstock accounting where required) in its importer capacity. These answers remain the same regardless of whether the company sells the blendstock following import, or uses the blendstock to produce gasoline at a refinery operated by the company.

10. **Question:** Please explain the differences in blendstock tracking or blendstock accounting if a refinery's blendstock-to-gasoline ratio is less than 3%, is between 3% and 10%, and is greater than 10%. May a refiner require a blendstock recipient to account for blendstocks instead of the refiner?

**Answer:** Section 80.102 requires refiners and importers to track the volume of certain blendstocks that are produced or imported (blendstock tracking), and under certain circumstances to include in anti-dumping compliance calculations all blendstocks produced or imported (blendstock accounting). Blendstock accounting is triggered by a comparison of: a) the blendstock-to-gasoline ratios for the annual anti-dumping averaging periods; to b) the blendstock-to-gasoline ratios for the baseline period (1990 through 1993). Thus, blendstock accounting is required only when a refinery's blendstock-to-gasoline ratios beginning in 1995 are large in comparison to that refinery's baseline ratios, and not based on the magnitude of the refinery's averaging period blendstock-to-gasoline ratios taken alone. A single exception to this general principal, under § 80.102(f)(1)(ii), applies when a refinery's averaging period blendstock-to-gasoline ratio is 3% or less, in which case blendstock accounting is not required regardless of the comparison to the baseline blendstock-to-gasoline ratio.

In every case where blendstock accounting is required, under § 80.102(e)(2)(i) the refiner or importer is required to include all blendstocks produced or imported in anti-dumping compliance calculations. In every case where a refiner or importer is required to account for blendstocks, the refiner or importer must meet this requirement, and it may not be passed to recipients of the blendstock. On the other hand, in every case where blendstock accounting is not triggered by § 80.102(e)(2)(i), the refiner or importer may not include the blendstocks in compliance calculations, and the downstream parties who use the blendstock to produce gasoline must always include the blendstock in their compliance calculations.

