

## L. ANTI-DUMPING REQUIREMENTS

1. **Question:** Is the transition date for conventional gasoline (subject to Anti-dumping requirements) the same as the December 1, 1994 terminal level date currently indicated for RFG?

**Answer:** No, the anti-dumping gasoline requirements are for conventional gasoline produced during the averaging period which begins January 1, 1995.<sup>(7/1/94)</sup>

2. **Question:** If a refiner produces only conventional gasoline, what is the purpose of the added burden of testing, auditing, documentation, and general compliance requirements? Since there is only conventional gasoline produced, there can be no dumping. Also, if the EPA is concerned with other companies dumping into our conventional gasoline pool by selling us blendstocks, the blendstock accounting section would prohibit this. Thus, we come back to the question, "What is EPA's intent with the baseline and compliance requirements for conventional gasoline refiners?" Can the EPA exempt refiners from the accounting requirements for conventional gasoline? The EPA could exempt conventional gasoline reporting for a baseline volume; however, this implies that the EPA has a hidden agenda to control the future quality, if not the current quality, of conventional gasoline. Is it possible to petition the EPA for an exemption to the accounting and compliance requirements for conventional gasoline?

**Answer:** The Clean Air Act requires that all conventional gasoline on average be at least as clean as it was in 1990 regardless of who produces the conventional gasoline. Therefore, all refiners and importers are subject to requirements that ensure the quality of their conventional gasoline beginning in 1995. Refiners and importers of conventional gasoline could provide "dirtier" gasoline if not specifically prohibited, regardless of whether they produce or import RFG. Therefore, neither the statute nor the regulations provide for exceptions to these requirements.<sup>(7/1/94)</sup>

3. **Question:** The applicability of standards in §80.101(c) is not clear. Do these provisions apply by refiner, regardless of how its refineries are aggregated? These provisions should apply to either individual refineries or aggregated refineries, depending on the refiner's choice of grouping refineries according to §80.101(h).

**Answer:** The standards specified at §80.101(c) apply to individual refineries or refinery groupings as selected by the refiner under § 80.101(h).<sup>(7/1/94)</sup>

4. **Question:** Refiners with low baseline levels of sulfur and olefins will have difficulty meeting the standards for these parameters under the simple model. Further, the requirement for NOx emission levels beginning in 1998 for conventional gasoline may be lower than NOx levels for Phase I and/or Phase II RFG. How will refiners find equitable treatment under these circumstances?

**Answer:** The regulations implement the terms of both the Reg Neg agreement and the statute very clearly for conventional gasoline. Sulfur and olefins cannot exceed 125% of the baseline levels under the simple model, and NOx emissions cannot increase over baseline levels beginning in 1998. There are no exceptions to these requirements.<sup>(7/1/94)</sup>

5. **Question:** If a cargo of conventional gasoline is imported before 1995, but not sold over the rack or to a wholesaler until 1995, is it to be accounted in the 1995 compliance calculation?

**Answer:** Standards apply to any conventional gasoline produced or imported during the averaging period. Therefore, a cargo of conventional gasoline imported before January 1995 would not be included in the importer's 1995 compliance calculation, even if all or some of the cargo was not sold until 1995.<sup>(9/12/94)</sup>

6. **Question:** Refiner A is holding some of Refiner B's conventional gasoline in tanks at one of Refiner A's terminals or at Refiner A's refinery. Refiner A adds additional stocks to that gasoline at the request of Refiner B. Who is responsible for including the stocks in their compliance calculation (Refiner A or Refiner B)?

**Answer:** The definition of "refiner" includes any person who owns, leases, operates, controls or supervises a refinery. Therefore, under this scenario, both the person who owns the gasoline being blended, and the person who owns the terminal tanks would be considered to be refiners. Each person meeting the definition of refiner for a particular refinery operation is independently responsible for the completion of all refinery requirements, such as meeting standards, sampling and testing, record keeping, reporting, and independent audits. However, these refinery requirements must be met only once for any refinery operation. As a result, if the refinery requirements are properly accomplished by one "refiner" for a particular refinery operation, EPA will consider the requirements to have been accomplished by each person who meets the definition of refiner for that operation.

Normally the product owner takes responsibility for meeting the anti-dumping requirements. In the situation described in this question, the owner of the blendstock (who is not identified in the question) therefore would normally take responsibility for the anti-dumping requirements.<sup>(7/1/94)</sup>

7. **Question:** Does blending oxygenate in conventional gasoline at a terminal require the terminal operator to be registered as an "oxygenate blender?"

**Answer:** The downstream blender of oxygenates exclusively into conventional gasoline is not subject to the anti-dumping requirements and therefore does not require registration by the operator.<sup>(7/1/94)</sup>

8. **Question:** Where in the final anti-dumping regulations are oxygenate blenders excluded from the antidumping requirements?

**Answer:** Although oxygenate blenders have been considered refiners under previous EPA programs, they have been defined separately from refiners under § 80.2 for the purpose of specific requirements under the RFG program. The regulations specify that only refiners and importers are subject to the anti-dumping requirements. Therefore, oxygenate blenders are excluded from the anti-dumping requirements to the extent that they exclusively add oxygenate, and not other blendstocks such as raffinate, etc.<sup>(7/1/94)</sup>

9. **Question:** Could a refiner who distributes only in an attainment area produce all or part of his gasoline as RFG and market as conventional gasoline without including the RFG portion in meeting his 1990 baseline requirements? What are the recordkeeping implications?

**Answer:** It is not a violation to market reformulated gasoline in conventional gasoline areas. Gasoline designated as RFG must still meet all RFG requirements, including recordkeeping, reporting, independent sampling and testing, auditing, etc.<sup>(7/1/94)</sup>

10. **Question:** If a batch of reformulated gasoline fails to meet the RFG specifications but meets the anti-dumping (i.e. conventional gasoline) specifications, can this batch be certified as conventional gasoline? May it be distributed through a facility located in an RFG area? What is required on the bill of lading? What else is required of the distributor? Is the distributor liable if the recipient sells the conventional gasoline in an RFG area?

**Answer:** Gasoline that does not meet the requirements for reformulated gasoline may be designated as conventional gasoline prior to leaving the refinery and must be included in the refiner's compliance calculations in accordance with the anti-dumping requirements regardless of its original

intended designation. The regulations do not prohibit the distribution of conventional gasoline to a non-covered area from a facility located in a covered area, subject to the applicable controls under § 80.78. But, the facility should take appropriate precautions to ensure that conventional gasoline is not distributed in the covered area.(7/1/94)

11. **Question:** Anti-dumping section 80.101(e) Products to which standards do not apply, indicates that "California gasoline" should be excluded from a refinery's compliance calculations. "California gasoline" is defined in 80.81 as "any gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California and that (i) is manufactured within the State of California; (ii) is imported into the State of California from outside the United States; or (iii) is imported into the State of California from inside the United States and that is manufactured at a refinery that does not produce reformulated gasoline."

Based on these sections, is it a correct interpretation that starting in 1995 a California refinery or importer producing or importing conventional gasoline solely for the California market would exclude all its gasoline from baseline compliance calculations and therefore not have any reporting requirements?

**Answer:** Refiners and importers providing gasoline for use in non-RFG areas in California prior to March 1, 1996 must meet all the anti-dumping requirements. Gasoline produced or imported for use in California on or after March 1, 1996 is not subject to the anti-dumping requirements.(7/1/94)

12. **Question:** Since gasoline produced or imported for use in California on or after March 1, 1996 is not subject to the anti-dumping requirements, will all such gasoline be subject to the RFG requirements even if this gasoline is to be used outside to the RFG area?

**Answer:** This question indicates a misunderstanding of the nature of the enforcement exemption for California gasoline at § 80.81. This exemption is from certain requirements intended to demonstrate compliance with the RFG and anti-dumping requirements, such as independent sampling and testing, and subsequent to March 1, 1996 when the California Phase II standards become effective, certain record keeping and reporting requirements. Section 80.81 is not an exemption from meeting the RFG standards for gasoline used in RFG covered areas or the anti-dumping standards that apply to conventional gasoline. EPA has granted the exemption at § 80.81 because there is a presumption that gasoline produced to meet the California Phase II standards will also meet the federal RFG standards. If any gasoline produced in California does not meet the RFG standards (in the case of gasoline used in the Los Angeles or San Diego RFG covered areas), or the anti-dumping standards (in the case of gasoline used outside these RFG covered areas), the refiner or importer will have violated the RFG/anti-dumping regulations, for which penalties may be assessed.

As a result, gasoline used outside the RFG covered areas in California will be evaluated for compliance with the anti-dumping standards, and not with the RFG standards. As a practical matter, it is likely that gasoline produced to meet the California Phase II standards also would meet the federal anti-dumping standards. Nevertheless, California refiners should evaluate the refinery-specific anti-dumping standards (at § 80.101) that apply to their refineries to ensure these standards are met.(8/29/94)

13. **Question:** Are aliphatic solvents to be considered gasoline under the test of Section 80.102(a)(2), since the addition of oxygenates will result in a marketable gasoline, even if they are marketed for purposes other than gasoline.

**Answer:** Products such as aliphatic solvents, for which there is documentation to demonstrate that they are not used in the production of gasoline, are not considered gasoline or gasoline blendstocks.(7/1/94)

14. **Question:** Recently, a natural gas pipeline condensate was refused at a fractionator. The condensate met all fractionator specifications and did not contain any hazardous materials.

The operator of the fractionator advised that their facility could only take in previously manufactured materials as a direct result of the anti-dumping rules contained in the reformulated gasoline regulations. Within the anti-dumping Subpart E, we cannot find any mention of previously manufactured materials. However, Subsection 80.102 "Controls applicable to blendstocks" does define "gasoline blendstocks" as products that are produced by a refiner but it also goes on to include other blendstocks with properties certain.

The condensate described herein would not meet the definitional requirements of a gasoline blendstock as its end point would disqualify it as a gasoline (if an oxygenate was added). The fractionator would separate the condensate into a gasoline component and a diesel component.

Is it the intention of the EPA that only manufactured products be used in blending either reformulated or conventional gasoline? Is it the intent to restrict the use of naturally occurring hydrocarbons in a fractionator that produces gasoline?

**Answer:** The regulations do not prohibit or restrict the use or distribution of any gasoline or gasoline blendstocks regardless of their origin. Compliance with the anti-dumping requirements is based primarily on the properties of finished conventional gasoline. However, for the reasons discussed in the preamble to the final rule, the regulations also require the tracking and accounting of certain "applicable blendstocks" as defined in the regulations. The regulations do not intend to restrict the use of naturally occurring hydrocarbons. (7/1/94)

15. **Question:** A refiner produces a tank of conventional gasoline on December 30, 1995. The tank is not shipped until January 2, 1996. Must the refiner include this batch in his 1995 volume or does he have the option of including it in either 1995 or 1996?

**Answer:** Compliance for a particular batch of conventional gasoline is based on the date the batch is produced, not shipped. As a result, the batch identified in the question would be included in the 1995 compliance calculations. However, the volume for that batch would be the entire shipped volume, even though the shipment did not occur until 1996. (7/1/94)

16. **Question:** The regulations require a refiner or importer to determine and report properties for each batch of reformulated and conventional gasoline it produces or imports. The wording would indicate that a refiner would report the volume produced into a tank. A better method would be to base the volume on refinery shipments. There are generally official records for refinery shipments such as meter tickets, bills-of-lading or tank gauges. These records can be more easily verified than trying to track refinery production.

Consider the situation where conventional gasoline is shipped from a refinery tank through a meter with a representative composite line sample collected on the shipment. The composite sample is tested in the refiner's lab for the required parameters. Please confirm that this method is acceptable for determining the conventional gasoline properties and volume.

**Answer:** The method described above is appropriate for determining the volume and properties of a batch of conventional gasoline as required by the anti-dumping regulations provided the sample analyses and volume determination are supported by appropriate documentation. (7/1/94)

17. **Question:** Baseline volumes are determined as the larger of the total volume produced in or shipped from a facility in 1990, excluding gasoline blendstocks and exported gasoline, and including the oxygenate

volume under certain circumstances. Compliance volumes are described as volumes produced and shipped during the compliance period. Is there an intentional difference in the volume descriptions of baseline development and compliance records?

**Answer:** Yes, the difference was intentional. The baseline determination provisions at §§ 80.90 and 80.91 are intended to allow for the largest volume of product possible for determining refinery baseline values and therefore permit the larger of produced or shipped as the 1990 volume. The compliance requirements, however, apply to the volume of gasoline produced and shipped during the compliance period. For consistency between averaging periods, the date of production defines in which averaging period product is included even if shipment occurs after December 31.<sup>(7/1/94)</sup>

18. **Question:** § 80.101(i)(1) says that conventional gasoline cannot leave a refinery until testing is completed for all parameters used in the compliance calculation. (e)(2) of the same section says that for purposes of meeting (e)(1) a refiner may composite samples and treat that as one batch provided that the composite is not for materials produced or imported over more than one month. May material leave the refinery before analysis is run on the composite? Just a comment, is it really necessary to hold up a batch for at least three hours while an FIA is run for olefins especially since the results of an individual batch are irrelevant for conventional gasoline. Is it EPA's intention to preclude in-line blending of conventional gasoline by this requirement?

**Answer:** The regulations have been revised at § 80.101(i)(1) to allow conventional gasoline to leave a refinery or importer facility prior to the completion of sample testing. Note that there are additional constraints related to composite samples at § 80.101(i)(2) that must be followed for refiners that use composite sampling. The volume and results of analysis of the composite sample should be treated as if applied to one batch for the purposes of §§ 80.104 and 80.105. Further, this revision to the regulation will allow the continued practice of in-line blending for conventional gasoline. See the "In-Line Blending" section for further discussion of this subject.<sup>(7/1/94)</sup>

19. **Question:** Conventional gasoline refiners and importers who elect the simple model to determine compliance during the 1995-1997 period will need to test for T90, olefins, sulfur, benzene and aromatics. They must then report T90, olefins, sulfur and exhaust benzene average results on an annual basis. Will these refiners and importers need to test and report any of the other quality parameters? Will simple model RFG refiners and importers and their independent labs need to test and report T50, E200 or E300?

**Answer:** No for both questions.<sup>(7/1/94)</sup>

20. **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.<sup>(10/17/94)</sup>

21. **Question:** When no oxygenates are added to gasoline, must an oxygenate analysis be performed?

**Answer:** Under the anti-dumping requirements, the refiner and importer is required to determine the properties of each batch of gasoline required for determining compliance with the applicable standards. Under the simple model, an analysis for oxygenates would clearly be unnecessary. If a particular batch of gasoline has been imported or received from another refiner or the refiner is using the complex model, then a full analysis, including oxygenates, is appropriate. If, however, the refiner has produced conventional gasoline under the complex model from crude oil without the addition of any oxygenates, an analysis for oxygenates would not be necessary. Under the RFG program, a refiner is required to ensure compliance with the applicable oxygen requirements and must test accordingly.<sup>(7/1/94)</sup>

22. **Question:** Since the oxygen content of conventional gasoline is not used for the simple model compliance requirements, we believe it is not necessary to analyze for oxygen or oxygenate in conventional gasoline during 1995-1997 even though we use oxygenate in certain grades of conventional gasoline. Is this correct?

**Answer:** The anti-dumping regulations do not require oxygen analysis under the simple model.<sup>(11/21/94)</sup>

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

**Answer:** The analysis of the product that is performed by Refinery A should be used. <sup>(4/18/95)</sup>

24. **Question:** A refinery has streams (alkylate, butane, platformate, etc.) being blended into two tanks, 95 and 85 octane. Products from these two tanks are in-line blended at the rack to give 87, 89, and 92 octane product. Can just the 85 and 95 octane tanks be certified for all gasoline properties for a specific volume (batch), without actually sampling any product downstream of the in-line blending?

**Answer:** Conventional gasoline that has been included in a refiner's compliance calculations may be fungibly mixed, including multi-grade mixing, without the need for additional sampling and testing.<sup>(8/29/94)</sup>

25. **Question:** Could a refinery producing conventional gasoline composite samples up to one month, ship to another location and run testing there?

**Answer:** Yes. The regulations do not specify where or by whom the testing may be performed. The refiner or importer is ultimately responsible for sampling and testing each batch of conventional gasoline and reporting the results to EPA. Composite sampling is appropriate under the conditions specified at § 80.101(i)(2).<sup>(7/1/94)</sup>

26. **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).<sup>(10/17/94)</sup>

27. **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.<sup>(10/17/94)</sup>

28. **Question:** Confirm that the only specification for a blendstock being added to finished gasoline in early use of the Simple Model is a per gallon specification not exceeding the antidumping baseline exhaust benzene level, (per Section 80.101(g)(3)), and later the exhaust toxic and exhaust NOx baseline levels in 1998 and beyond. This is very important to clearly understand as regular CBOB is not a fungible grade of gasoline. Component blending with finished regular and ethanol is a very important option to blending regular CBOB with ethanol in terminals. This option is critical whenever the refinery that feeds the CBOB terminals requires maintenance or has operational problems, and no other refinery that feeds that terminal makes regular CBOB.

**Answer:** Under the simple model for 1995-1997, refiners and importers are required to meet standards for exhaust benzene, sulfur, olefins and T90 on an annual average basis for conventional gasoline and, under certain conditions, applicable blendstocks as specified in § 80.102. Beginning in 1998, refiners and importers are required to meet standards for exhaust NOx and toxics emissions on an annual average basis. There are no "per-gallon" requirements for conventional gasoline. The anti-dumping requirements do not preclude the blending of ethanol with finished gasoline or with blendstocks which become gasoline upon the addition of oxygenates.<sup>(7/1/94)</sup>

29. **Question:** For a refiner producing conventional gasoline, may the election of using the simple or optional complex model until 1998 be changed annually?

**Answer:** Yes. However, if the Simple Model Standards for reformulated gasoline are used, then the Simple Model Standards for conventional gasoline must be used. If the Complex Model Standards for reformulated gasoline are used, then the Optional Complex Model Standards for conventional gasoline must be used. Beginning on January 1, 1998 only the Complex Model Standards for conventional gasoline are applicable. RFG produced in 1994, however, must use the same model as that chosen for 1995.<sup>(7/1/94)</sup>

30. **Question:** Reference section 80.101(g) Compliance Calculations: Section 80.101(g)(1) requires the computation of an "annual average value for each parameter or emissions performance during the averaging period." Paragraph (g)(1)(ii) presents an equation for computing averaged parameters based on individual batch data (APARM). Are the values computed for APARM then substituted in the appropriate equations found in 80.45? If so, should the words "for each batch" in paragraphs (g)(1)(iii-v) be eliminated? If not how are averaged values for emissions performance to be calculated from the values of APARM?

Sections 80.101(g)(5) and (6) designate which model to use, summer or winter, to compute batch emissions performance. 40 CFR 80.27 contains both RVP limits by geographical area and by control period. Are "summer gasolines" to be determined by both limits? Should any gasoline produced to the applicable RVP limit be designated as summer regardless of what time of year it was produced? Or should summer gasoline be only that gasoline meeting the RVP limit and produced during the control

period?

**Answer:** Sections 80.101(g)(1)(i) and (ii) have been revised to clarify the simple and complex model calculation requirements. APARM calculations apply only to simple model calculations. The complex model calculations require exhaust benzene, exhaust toxics, and exhaust NOx emissions performance, as applicable, for each batch to be calculated in accordance with the applicable model under 80.45. Product will be considered "Summer gasoline" if it has an RVP less than or equal to the RVP requirements of 80.27, regardless of when it is produced. Product will be considered "Winter gasoline" if it has an RVP in excess of the RVP requirements of 80.27, regardless of when it is produced. Of course, it is necessary to know the area for which the gasoline is produced in order to know the applicable RVP standard under § 80.27.<sup>(7/1/94)</sup>

**31. Question:** The regulations state that gasolines with RVP equal to or less than the RVP required under 40 CFR 80.27 (Summer Gasoline) shall use the applicable Summer Complex Model under 80.45 and the Winter Model for RVP's greater than that required under 40 CFR 80.27. In most areas of the country 9.0 psi was the summer specification under 40 CFR 80.27. Would this mean that any conventional gasoline produced to an RVP less than or equal to 9.0 psi would use the Summer Complex Model and greater than 9.0 psi would use the Winter Complex Model no matter what time of the year that gasoline is produced? Does the fact that under § 80.27 gasoline in the Southern Areas that goes to an ozone non-attainment area must be 7.8 psi alter this split in any way? Is 9.0 psi gasoline produced in California for distribution to Arizona certified with the Summer or Winter Complex Model?

**Answer:** Section 80.101(g)(5) and (6) state that the emissions performance of gasoline with an RVP that is equal to or less than that required under § 80.27 must be determined using the appropriate summer complex model and that the emissions performance of gasoline with a higher RVP must be determined using the winter complex model. The intent of the regulations was to clearly distinguish summer and winter gasoline for the purposes of determining compliance. Although the regulations establish a criterion based on actual RVP levels, it also is intended that gasoline which is produced for use outside the high ozone period (May 1 through September 15 for most of the country, and April 1 through October 30 in California), or is not intended to blend down storage tanks in preparation for the high ozone period, should be evaluated using the winter complex model. For example, gasoline produced beginning at the end of the ozone control period for distribution over the winter months should be evaluated using the winter complex model regardless of the actual RVP of this gasoline. In the situations described in the question, 7.8 psi gasoline should be considered summer gasoline unless it is produced for use clearly outside the high ozone period, and 9.0 psi gasoline produced in California for winter use in Arizona should be considered winter gasoline.<sup>(8/29/94)</sup>

**32. Question:** Please confirm that the models proposed are appropriate for the following production and consumption scenarios:

<u>Gasoline Produced in LA</u>	<u>Consumed</u>	<u>Model Used</u>
1. March 15, 1995 RFG-7.8 psi	Los Angeles	Simple - Summer
2. Sept. 1 1995 RFG-7.2	Los Angeles	Simple - Summer
3. Oct. 15 1995 RFG-7.8	Los Angeles	Simple - Summer
4. Jan. 15 1998 Conv-9.0	Phoenix	Complex- Summer
5. Jan. 15 1998 Conv-11.0	Flagstaff	Complex- Winter
6. Sept. 1 1998 Conv-7.0	Phoenix	Complex- Summer
7. Nov. 15 1998 Conv-9.0	Seattle	Complex- Summer
8. Nov. 15 1998 Conv-9.0	Portland	Complex- Summer

**Answer:** Scenarios 1 and 3 are subject to the winter simple model, while scenario 2 is subject to



the summer simple model. Scenarios 4, 5, 7, and 8 should use the winter complex model and scenario 6 should use the summer complex model.<sup>(9/12/94)</sup>

**33. Question:** Is compliance with the optional complex model standards or the complex model standards measured against a refiner's 1990 baseline, or the refiner's compliance baseline?

**Answer:** Under § 80.101(b)(1), compliance with the anti-dumping simple model standards is measured in relation to a refiner's or importer's compliance baseline, which is calculated using the methodology specified at § 80.101(f). Under §§ 80.101(b)(2) and (3), however, compliance with the optional complex model and complex model is measured in relation to a refiner's or importer's 1990 baseline. This would imply that a refiner's or importer's compliance baseline is not used in conjunction with the optional complex model or the complex model. EPA intended, however, that the compliance baseline would be used to measure compliance with the optional complex model and the complex model. The rationale that gave rise to the compliance baseline that is included in the preamble to the [fill in the correct proposal] is equally appropriate to the simple model, the optional complex model, and the complex model.

EPA intends to correct the language in §§ 80.101(b)(2) and (3) to specifically require use of the compliance baseline in a rulemaking in the near future.<sup>(12/5/94)</sup>

**34. Question:** In the case of a party who is both a refiner and an importer and who, therefore, is subject to § 80.101(f)(3), what is the impact of refinery groupings under § 80.101(h) on the calculation under § 80.101(f)(3)?

**Answer:** Section 80.101(f)(3) states that a party who is both a refiner and an importer must calculate a compliance baseline for imported gasoline using the 1990 volume weighted average of all the refiner's individual refinery baselines. Section 80.101(h) allows a refiner who operates more than one refinery to group the refineries for purposes of demonstrating compliance with the anti-dumping standards. These two provisions operate independently, so that a refiner who is subject to § 80.101(f)(3) would use all of its refineries to calculate the imported gasoline compliance baseline, regardless of any refinery groupings under § 80.101(h).<sup>(8/29/94)</sup>

**35. Question:** Reference section 80.101(f) Compliance Baseline Determinations: **Situation:** A refinery makes all conventional gasoline. For eight months of the year the refinery makes this conventional gasoline to a summer (7.8 psi) RVP specification and to a winter (higher RVP) specification the other four months of the year. In 1998, the refinery increases production of conventional gasoline beyond its 1990 volumes. Is it correct that Veq (paragraph (f)(4)(i) and CBi (paragraph (f)(4)(iii)) are computed without regard for whether the incremental gasoline is produced as summer or winter gasoline? Are the correct values for DBi found in 80.91(c)(5)(iv)-NEW (proposed for Direct Final Rulemaking), the "annual average antidumping statutory baseline"? Are the correct values for Bi the numbers computed pursuant to 80.91(f)(2)(i), the "individual annual average baseline emissions"?

**Specific Example:** A Hawaiian refinery makes non-VOC controlled conventional gasoline year round. Assuming the refinery complies using the complex model, per paragraph (g)(6), antidumping compliance calculations will use the winter complex model found in 80.45. If this refinery elects to increase production of conventional gasoline in 1998 or later, is it correct, in computing CBi, to use values for DBi found in 80.91(c)(5) (iv)-NEW, the "annual average antidumping statutory baseline" and not the values referred to in 80.91(c)(5)(ii) (column headed "Winter" in chart found in 80.45(b)(3))? If so, this interpretation would appear to force increased production of conventional winter gasoline to meet a combined winter/summer baseline. Was this EPA's intent?

**Answer:** The intent of the regulations is to ensure that each refiner's and importer's conventional

gasoline beginning in 1995 is no dirtier than its 1990 gasoline up to its 1990 volume. Production in excess of the 1990 volume is required to meet the statutory baseline. The regulations have been amended to define the annual average complex model statutory baseline values for exhaust benzene, NOx and toxics which were omitted from the final rule. These values are based on the seasonally weighted summer and winter baseline fuel performance levels. The interpretation suggested above is generally correct that any increased volume above 1990 levels would have to meet the combined winter/summer statutory baseline performance levels. However, the exact scenario presented above would require an increase in summer gasoline production, not winter gasoline.<sup>(7/1/94)</sup>

**36. Question:** The compliance baseline parameter calculation includes a component of the statutory baseline even when the volume of conventional gasoline in 1995 is less than or equal to the volume of conventional gasoline in 1990. Is it correct to conclude that, to the extent that a refiner's volume grows in 1995 versus 1990, the refiner will come under statutory guidelines for some of its conventional gasoline production, regardless if that volume growth is reformulated or conventional gasoline?

**Answer:** Yes.<sup>(7/1/94)</sup>

**37. Question:** How is excess volume above 1990 baseline volume counted against 1990 refinery baseline parameters? (a) If volume in 1995 is 10% above that of the 1990 volume and 1995 production is 90% RFG and 10% conventional, is the 10% conventional compared against the refinery 1990 baseline, statutory baseline or some combination of both? (b) Same as (a) but using 110% conventional gasoline production? (c) Same as (a) but using 50% conventional and 50% RFG?

**Answer:** For a refiner or importer whose 1995 total gasoline volume exceeds that of 1990, the revised compliance baseline adjustment equation specified under § 80.101(f)(4)(ii) is used to determine the applicable baseline. This equation adjusts baselines solely on the basis of the overall gasoline volume in an averaging period as compared to baseline 1990 volume, and is independent of the mix between reformulated and conventional gasoline. As a result, in the question presented where the refinery's 1995 gasoline volume increases 10% over the refinery's 1990 baseline volume, the same adjusted compliance baseline would be used for all conventional gasoline produced in 1995, regardless of the mix of RFG and conventional gasoline in 1995.<sup>(8/29/94)</sup>

**38. Question:** When using the compliance baseline calculation at § 80.101(f)(4)(ii) for the 1995 anti-dumping averaging period, should volumes of RFG produced during 1994 and 1995 be included in the  $V_a$  term, or only RFG produced during 1995?

**Answer:** Only RFG, conventional gasoline, and California gasoline produced during the 1995 anti-dumping averaging period (January 1, 1995 through December 31, 1995) should be included in the compliance baseline calculation for 1995. Therefore, any gasoline produced before January 1, 1995 should be excluded from the 1995 compliance baseline calculation under § 80.101(f)(4)(ii).<sup>(12/5/94)</sup>

**39. Question:** Does the provision at § 80.101(f)(3), related to the baseline for imported gasoline for a party that is both a refiner and an importer, apply to both imported conventional gasoline and imported RFG, or only to imported conventional gasoline?

**Answer:** Section 80.101(f)(3) applies only to conventional gasoline, and does not affect the baseline that applies to imported RFG. Section 80.101(f)(3) states that the operation of this section is to create a new "compliance baseline" for imported gasoline. The compliance baseline applies to conventional gasoline only, and not to RFG.<sup>(8/29/94)</sup>

**40. Question:** How does § 80.101(f)(3) operate in the case of a refinery for which there are more than one persons who meet the definition of refiner? Which of the co-refiners must calculate a compliance

baseline for imported gasoline?

**Answer:** In the case of a refinery for which there is more than one refiner, only the refiner who submits reports to EPA (normally the refiner who principally operates the refinery) would be affected by § 80.101(f)(3). Thus, if this reporting co-refiner is also an importer, this co-refiner would include the refinery in the calculations under § 80.101(f)(3), and no other co-refiner would be impacted by § 80.101(f)(3). If the reporting co-refiner is not also an importer, § 80.101(f)(3) would have no application, even if other co-refiners are also importers. (8/29/94)

41. **Question:** Does a refiner include or exclude a particular refinery which it is selling, or has recently sold, in its volume weighted average baseline calculation for its imported conventional gasoline?

**Answer:** If a refinery is sold during 1994, then the refiner who owns the refinery on January 1, 1995 is responsible for the compliance of that refinery's conventional gasoline and 1) may include it in an aggregate group with other refineries and 2) must include that refinery in the volume weighted average baseline determination for its imported conventional gasoline. If the refinery is sold after January 1, 1995, then the selling and purchasing refiners must determine compliance for the gasoline produced during each party's ownership, and each party must determine its respective baseline volume based on the period of ownership for each refiner. However, both parties would use the 1990 annual average baseline properties as determined under §§ 80.90 and 91 for evaluating compliance. In addition, if either refiner also imports conventional gasoline, the refiner-importer must include that refinery in its import baseline determination, using the time-apportioned baseline volume and baseline properties to calculate the refinery-average baseline. The purchasing refiner may also aggregate its portion of the ownership with other refineries each owns under § 80.101(h), and under § 80.101(h)(2)(ii) the selling refiner must so aggregate if the refinery previously was part of an aggregation. The refiner must use the time-apportioned baseline volume and the baseline properties to weight this refinery in the aggregate baseline, and the volume and properties of conventional gasoline produced at the refinery during the portion of the averaging period when the refinery is owned to weight this refinery in the aggregate compliance calculation.

For example, if Refiner A sells the refinery to Refiner B on March 31, then Refiner A would use 1/4 of the 1990 volume as its share of the 1990 baseline volume, and Refiner B would use 3/4 of the 1990 volume as its share of the 1990 baseline volume. (8/29/94)

42. **Question:** What documentation must a refiner or importer obtain to exclude exported gasoline from their compliance calculations per § 80.101(e)(4)?

**Answer:** Section 80.101(e)(4) does not designate any specific documentation required to exclude exported product from a refiner's or importer's compliance calculations. However, product transfer documents accompanying a product for export should clearly indicate that the product is intended for export only. In addition, refiners and importers of product intended for export should be able to provide some form of evidence that the product was, in fact, exported, such as a receipt from an exporter which includes a statement that the exporter purchased the particular product in question for export only, or other affirmative evidence from the transferee that would provide a reasonable basis to expect that the product in question was exported. Such evidence may be included on the routine business documents that memorialize the transaction between the parties. Regardless of the documentation, however, if the gasoline, in fact, was not exported, it may not be excluded from the refiner's or importer's compliance calculations. (5/9/95)

43. **Question:** For a refiner producing conventional gasoline, may oxygenate added at a non-proprietary terminal be included in the determination of the conventional gasoline properties, provided the refiner has a quality assurance program at the terminal to ensure the oxygenate was added?

**Answer:** A refiner may include oxygenates added to conventional gasoline by a party downstream of the refinery, including a "non-proprietary terminal," provided the refiner has a program in place to ensure that the oxygenate is added as reported by the refiner as required by § 80.101(d)(4)(ii). This program should include such controls as an appropriate contract with the downstream blender, periodic sampling and testing, and audits and inspections as necessary to ensure that the requirements are being met. These are discussed more fully in the preamble to the final rule.<sup>(7/1/94)</sup>

44. **Question:** Can a refiner blend oxygenate into purchased conventional gasoline and use the oxygenate to meet its conventional gasoline requirements as long as the oxygenate is not being counted by the producer of the gasoline? Can this blending occur at a refiner owned terminal?

**Answer:** Section 80.101(d)(4) provides that any oxygenate that is added to conventional gasoline, or gasoline blending stock as described in § 80.101(d)(3), may be included in the refiner's compliance calculations, "where such gasoline or gasoline blending stock is produced or imported during the averaging period" (emphasis added). In the case of oxygenate that is added at a point downstream of the refinery or import facility, the oxygenate may be included "only if the refiner or importer can establish the oxygenate was in fact added to the gasoline or gasoline blendstock produced" (emphasis added). This provision applies to gasoline produced or imported by the refiner or importer who seeks to include the oxygenate in his compliance calculations. A refiner may not purchase conventional gasoline produced or imported by another person, blend it with oxygenate, and include the oxygenate in its compliance calculations.<sup>(10/3/94)</sup>

45. **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.<sup>(10/17/94)</sup>

46. **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.<sup>(10/17/94)</sup>

47. **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.<sup>(10/17/94)</sup>

48. **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.<sup>(10/17/94)</sup>

49. **Question:** Relative to refinery grouping for baseline purposes: If one of a refiner's refineries is NOT wholly-owned (joint venture with another party), can this refinery be grouped with other refineries that are wholly-owned by that refiner?

**Answer:** In the case of a refinery that is jointly owned, the gasoline produced at the refinery can only be included in the compliance calculations of one of the joint owner-refiners. In addition, such a jointly-owned refinery may not be aggregated with other refineries for compliance purposes. Where more than one party owns a refinery, these parties should decide who will be responsible for demonstrating compliance with the anti-dumping requirements for gasoline produced at that refinery. However, all owners of that refinery may be liable for violations committed at that refinery.<sup>(7/1/94)</sup>

50. **Question:** Please clarify how baselines are established and compliance is calculated for blender-refiner terminals, in particular with regard to aggregating.

**Answer:** Terminals which blend conventional gasoline are considered refineries and thus required to meet the anti-dumping requirements. If such a facility is owned by a refiner with other

refineries, the terminal may be aggregated for compliance purposes with other facilities owned by that refiner. The baseline for the aggregated group will be the volume weighted average of all the refineries in the group, including the blending terminal if selected. The volume weighted average is the summation of the products of the baseline for each parameter, or emissions performance, multiplied by the 1990 volume for that facility, divided by the total of 1990 volumes for all facilities in the group. Compliance is determined by calculating the volume weighted average of the each parameter or emissions performance for all conventional gasoline produced at each facility in the group, including blending terminals which are in that group.<sup>(7/1/94)</sup>

**51. Question:** What is the aggregated baseline when refineries with individual baseline volumes and properties are aggregated with refineries that have the statutory baseline and no 1990 volume, such as terminals?

**Answer:** When a refiner aggregates refineries that have individual 1990 baselines with refineries that do not have 1990 individual baselines, the aggregate baseline volume is the 1990 volume of the refineries which have individual 1990 baselines, and the aggregate baseline properties is the volume weighted properties of the refineries which have individual 1990 baselines. This method of calculating the aggregate baseline volume and properties is appropriate because refineries without individual baselines are assigned the statutory baseline, and under § 80.101(f) any volume for a refinery (or aggregation of refineries) in excess of the 1990 volume is measured against the statutory baseline properties. Therefore, a refiner is able to measure compliance with the anti-dumping standards using 1990 individual baselines only up to the 1990 baseline volume regardless of how the refiner calculates the aggregation of the baselines for refineries without 1990 individual baselines.<sup>(12/5/94)</sup>

**52. Question:** Is a new volume correction needed only when the 1990 volume is exceeded on an aggregate basis rather than for each individual refinery? Are new volume corrections to be applied on an annual average basis or seasonally?

**Answer:** The new volume correction would be required when the 1990 volume is exceeded only on an aggregate basis, and applied on an annual average basis.<sup>(7/1/94)</sup>

**53. Question:** The July 1, 1994 Question and Answer Document indicates that sulfur, T90, and olefins are the only simple model RFG standards that can be seen on a refinery aggregated basis. We interpret this clarification to apply only to simple model RFG compliance and believe that it does not affect the anti-dumping provisions of § 80.101(b). Please confirm that all simple model anti-dumping standards can be met on a refinery-aggregate basis including sulfur, olefins, T90, and the exhaust benzene standards.

**Answer:** All simple model anti-dumping standards can be met on a refinery-aggregate basis pursuant to § 80.101(h).<sup>(11/28/94)</sup>

**54. Question:** Under § 80.91(b)(4), importers that do not have method 1, 2 or 3 type data shall have the statutory parameter values as specified in the regulations as its individual baseline. Under § 80.101(f)(3), any party that is both a refiner and importer and does not establish an individual baseline for its imported product, shall use the volume weighted average of all its individual refinery baselines as the compliance baseline for its imported product. Which is the applicable baseline for imported product?

**Answer:** Sections 80.90 and 80.91 provide the methodologies and procedures for ascertaining the appropriate data and for determining individual 1990 refiner, refinery or importer baselines based on those data and various other considerations. Section 80.101 establishes the standards applicable to refiners and importers and the methods and requirements for determining compliance with the anti-dumping statutory provisions. The preambles to the earlier proposals and the final rule discuss at some length the opportunities for certain refiners to take advantage of baseline differences by producing and

transferring blendstocks to another party with a less stringent baseline circumventing the intent of the anti-dumping requirements. A similar situation exists for a domestic refiner with a stringent baseline that could "export" gasoline and then immediately import that product at the less stringent statutory baseline, thus circumventing the anti-dumping requirements. Therefore, the regulations state that, for the situation where a party is both a domestic refiner and an importer and for which an individual baseline has not been determined for the imported product, such domestic refiner shall use the volume weighted average of all its refineries for compliance determination purposes for its imported gasoline. Any refinery grouping chosen by the refiner would not alter this determination. A party that is an importer exclusively, however, would be required to meet the statutory baseline if it could not establish an individual 1990 baseline in accordance with § 80.91 of the regulations. Compliance for the imported product shall be demonstrated separate and apart from any other refinery or refinery aggregation group.(7/1/94)

**55. Question:** If an importer becomes a supplier to a marketer who imported gasoline in 1990, can the importer add the marketer's 1990 volume to the importer's 1990 volume? Would the parameter values for the marketer's volume be the CAAA default values?

**Answer:** If an importer expands its import activities in 1995 by supplying additional marketers with conventional gasoline, the importer's 1990 baseline volume and properties would not change, regardless of the prior activities of the marketers.(7/1/94)

**56. Question:** According to 80.75(k) Reporting requirements for early use of the complex model, early use complex model RFG refiners and importers need to submit an early use election report 60 days prior to the beginning of the calendar year during which such standards would apply. Will a refinery not involved in RFG production but electing early use of the complex model for its conventional gasoline production be required to submit the same report?

**Answer:** No, the anti-dumping regulations do not require such a report.(7/1/94)

**57. Question:** Section 80.106 states (a) "On each occasion when any person transfers custody or title to any conventional gasoline, the transferor shall provide to the transferee documents which include the following information: ...(1) through (7); (8) The requirements of this paragraph (a) apply to product that becomes gasoline upon the addition of oxygenate only." 80.65(d)(1) "All gasoline produced or imported shall be properly designated as either reformulated or conventional gasoline, or as RBOB." It would appear that 80.106 is referring to a conventional gasoline blendstock for oxygenate blending (CBOB?) which heretofore has not been defined or discussed. Are 80.106(a)(1) - (7) intended for all conventional and conventional oxygenated gasolines? If so, the CBOB should be so identified to prevent confusion with regular conventional gasoline. Like RBOB, it should also contain the oxygenate information included in 80.77(i)(2) and (3).

**Answer:** The regulations require that conventional blendstock which will become conventional gasoline solely upon the addition of oxygenate must be considered conventional gasoline for the purpose of complying with the anti-dumping requirements, including the transfer document provisions of § 80.106(a). This corresponds to the requirement at § 80.101(d)(3) that such blendstock must be included in the anti-dumping compliance calculations for conventional gasoline. From a practical standpoint, the transfer documentation would need to indicate that oxygenate must be added and the refiner must undertake certain monitoring and quality assurance efforts to ensure the blending occurs as specified in the regulations, if the refiner is including any oxygenate blended downstream in its compliance calculations.(7/1/94)

**58. 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.<sup>(10/17/94)</sup>

59. **Question:** Do common carriers have any requirements or potential liability pertaining to the anti-dumping provision for conventional gasoline?

**Answer:** Common carriers (like all other regulated parties) are prohibited from distributing conventional gasoline for use in an RFG covered area, and must comply with the product transfer document requirements of § 80.106.<sup>(8/29/94)</sup>

## VII. ENFORCEMENT

### A. PROHIBITIONS

1. **Question:** With respect to section 80.65(a), would there be any violation by the terminal located in an RFG covered area selling only conventional gasoline to stations in attainment areas?

**Answer:** No. However, the terminal should take extra precautions to ensure that no conventional gasoline is distributed to a RFG area. See the discussion in the Prohibitions and Liabilities Section.<sup>(7/1/94)</sup>

2 **Question:** Is there any problem with supplying RFG designated as VOC-controlled for VOC Control Region 1 to an area requiring VOC Control Region 2 gasoline?

**Answer:** RFG designated as VOC-controlled for VOC Control Region 1 may be supplied to an area requiring RFG designated as VOC-controlled for VOC Control Region 2. The converse is not true, however.<sup>(7/1/94)</sup>

3. **Question:** Review of fungibility issues - what types of RFG may or may not be combined: at terminals? at retail? by consumers?

**Answer:** Section 80.78(a) requires the segregation of several categories of gasoline. These categories are:

RFG may not be mixed with conventional gasoline, and sold or used as RFG.

RFG blendstock for oxygenate blending (RBOB) may not be mixed with RFG or conventional gasoline, and RBOB's that have different oxygen requirements must be segregated from each other.

During the period January 1 through September 15 each year VOC-controlled RFG that is produced using ethanol must be segregated from VOC-controlled RFG that is produced

using any other oxygenate, including at the retail level.

Oxygenated fuels program RFG (OPRG) must be segregated from non-OPRG designated RFG(unless the OPRG contains a minimum of 2.0 wt% oxygen).

Upstream of the retail level, RFG produced under the simple model may not be mixed with RFG produced under the complex model.

Before January 1, 1998 each refinery's or importer's complex model RFG must be segregated from every other refinery's or importer's complex model RFG, unless the refineries or importers have identical baselines. This segregation requirement does apply at the retail level.

These segregation requirements preclude the mixing of any amount of the gasolines that must be segregated. For a discussion of the handling of the heel of a tank at terminals, see question 4 of the transition section.

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 contain no prohibition against combining VOC-controlled RFG with non-VOC-controlled RFG. As a result, VOC-controlled RFG may be added to a storage tank that contain 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 party who combines VOC-controlled and non-VOC-controlled RFG should treat the mixture as a downgrade to 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.<sup>(7/1/94)</sup>

**4. Question:** What requirements will be the subject of EPA inspections downstream from the refinery?

**Answer:** Downstream from the refinery or import facility, EPA will test gasoline for the applicable minimum and maximum parameters.

Prior to January 1, 1998, the Simple Model downstream standards apply: oxygen and benzene content, and RVP during the period May 1 through September 15 (June 1 through September 15 at the retail level). The minimum and maximum standards for these parameters are set out at section 80.41 of the Final Rule.<sup>1</sup>

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<sup>1</sup> With respect to refiners electing to measure compliance under Early Use of the Complex Model, and the establishment of minimum and maximum standards: oxygen and benzene content are identical to the standards under the Simple Model; NOx and VOC standards are 2.5% less stringent than the refiner's calculated per-gallon standard.

From January 1, 1998 through December 31, 1999, the Phase I Complex Model downstream standards apply: these are oxygen and benzene content, and Nox emissions performance, and VOC emissions performance during the period May 1 through September 15 (June 1 through September 15 at the retail level). The benzene maximum and oxygen minimum under the complex model are unchanged from the standards for these parameters under the simple model. The minimums for VOC in Region 1 and Region 2 and for Nox are set out at section 80.41 of the Final Rule.

Beginning January 1, 2000, the Phase II Complex Model downstream standards apply. The oxygen and benzene downstream standards are unchanged. The minimums for VOC in Region 1 and Region 2 are set out in section 80.41 of the Final Rule. The NOx minimum is unchanged from the Phase I Complex Model in the case of RFG not designated as VOC-controlled, and in the case RFG that is VOC-controlled, the NOx minimum is 3.0 percent reduction.

These minimum and maximum standards are subject to change under the gasoline quality survey program. In the event of a survey ratchet, the more stringent standard would be enforced by EPA at the refineries and import facilities for which the adjusted standard applies. In addition, the adjusted minimum/maximum standard will be enforced in the covered area where the adjusted minimum/maximum standard applies.

In addition to the downstream minimum/maximum standards, EPA will inspect and audit downstream parties for all other requirements that apply to them. These downstream EPA inspection and audit activities will include, but are not limited to:

- Audits to see if product transfer documents are being maintained as required, and if product transfer documents are being transferred to the next party in the distribution network as required.
- Audits of distributor terminals that handle RBOB to see if RBOB is dispensed only to registered oxygenate blenders; if ether-only RBOB is dispensed to truck blenders, audit to see if an appropriate basis exists for the distributor-terminal to believe the oxygenate blender is blending with ether oxygenates.
- Audits to verify that RFG being dispensed is proper for time and place of use -- VOC-controlled during May 1 through September 15; VOC controlled for proper VOC-control Region; oxygenated fuels program RFG (OPRG) dispensed in OPRG areas (unless exception for OPRG designated RFG with 2.0 wt% oxygen).
- Audits for compliance with the requirement for segregation of ethanol-based VOC-controlled RFG during January 1 through Sept 15 each year.
- If any complex model RFG is present, audits for compliance with the requirement for segregation of complex RFG from simple RFG, and segregation of complex RFG from each refinery from any other refinery's complex RFG (unless refineries have identical baselines).
- Audits for segregation of RFG from conventional gasoline, and no deliveries of conventional gasoline into RFG areas. Note however that RFG and conventional gasoline may be mixed and sold in conventional gasoline areas.
- In the case of ethanol blenders, audits for compliance with the requirements that apply to ethanol blenders, including blending of the proper type and amount of oxygenate, and conduct of the required sampling and testing.

5. **Question:** Please define any restriction in the RFG program on mixing ethanol and ether fuels.

**Answer:** Under § 80.78(a)(8), no person may combine VOC-controlled RFG produced using ethanol with VOC-controlled RFG produced using any other oxygenate during the period of January 1 through September 15 of each year. This prohibition applies at all locations in the gasoline distribution system, including at retail outlets and wholesale purchaser-consumer facilities.<sup>(7/1/94)</sup>

6. **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.

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.<sup>(10/17/94)</sup>

7. **Question:** In light of the prohibition at § 80.78(a)(8) against mixing VOC-controlled RFG produced using ethanol with any other VOC-controlled RFG during the period January 1 through September 15 each year, how can a retail station change from ethanol-based RFG (that is not VOC-controlled) to MTBE-based RFG (that is VOC-controlled) in advance of the high ozone season, and back to ethanol-based RFG at the conclusion of the high ozone season?

**Answer:** In the case of the transition at the conclusion of the high ozone season from MTBE-based RFG to ethanol-based RFG, the prohibition at § 80.78(a)(8) would not apply because by its terms this prohibition is limited only to the period through September 15. As a result, beginning on September 16 each year ethanol-based RFG may be delivered to a retail station storage tank that contains MTBE-based RFG. In addition, the ethanol-based RFG that would be delivered subsequent to September 15 probably would not be VOC-controlled. Because the § 80.78(a)(8) prohibition only applies to mixtures of two VOC-controlled RFGs, the post-September 15 mixing would not violate the prohibition for this additional reason.

In the case of the transition in advance of the high ozone season, from ethanol-based RFG to MTBE-based RFG, the § 80.78(a)(8) prohibition would not be violated if MTBE-based RFG is added to a retail station storage tank through normal gasoline deliveries even if the tank contains ethanol-based RFG, provided that these deliveries occur in advance of June 1 of each year and the storage tank is completely transitioned to MTBE-based RFG (i.e., the tank contains no ethanol) beginning on June 1. This process for changing the service of a storage tank does not violate § 80.78(a)(8) because the ethanol-based RFG in the storage tank is not VOC-controlled, and this prohibition only applies to mixtures of two RFGs that are both VOC-controlled.

During the high ozone season for the retail station, June 1 through September 15 each year, the gasoline in the storage tank must be VOC-controlled, and as a result the prohibition at § 80.78(a)(8) would apply and the gasoline in the retail station's storage tank may not have a mixture of ethanol and any other oxygenate.

This answer does not alter the option available to parties for blending the gasoline in storage tanks to meet the RFG standard in advance of the onset of the RFG program, on January 1, 1995 at the retail level and December 1, 1994 at upstream facilities, that is discussed in question IX-A-1 of the July 1, 1994 Question and Answer Document.<sup>(9/26/94)</sup>

**8. Question:** There are situations where ethanol will be present in very small quantities in RFG produced using other oxygenates. For example, ETBE often contains very small amounts of ethanol, less than 2%. As a result, will EPA apply a de minimis exception to the prohibition against mixing VOC-controlled RFG produced using ethanol with VOC-controlled RFG produced using any other oxygenate because of minimal oxygenate content?

**Answer:** Section 80.78(a)(8) prohibits the mixing of VOC-controlled RFG produced using ethanol with VOC-controlled RFG produced using any other oxygenate during the period January 1 through September 15. EPA will not consider this prohibition violated, however, in the case of RFG that was produced using an oxygenate other than ethanol, yet the RFG contains a volume of ethanol that is less than 0.4 vol%. If the RFG was produced using ethanol, EPA will not consider the prohibition violated if the volume of non-ethanol oxygenate is less than the volumes specified in § 80.65(e)(2)(i), i.e., 0.6 vol% in the case of MTBE, ETBE, TAME, or t-butanol, or 0.2 vol% in the case of methanol. These exceptions apply only if the offending oxygenate is present as a result of operational necessity, and specifically would not apply if the offending oxygenate was intentionally added. In addition, parties must meet the standards that apply to VOC controlled RFG without regard to these exceptions.<sup>(10/3/94)</sup>

**9. Question:** Under section § 80.78(a)(9), early use of complex model gasoline is limited by the requirement that all such gasoline be segregated throughout the distribution system from the point of production to the point of final sale or use. Because this restriction severely limits the fungibility of the product, in most situations, early use complex model gasoline is not economically viable. However, if an reformulated gasoline manufacturer were to produce early use complex model gasoline meeting all of the early use complex model requirements, and also meet all the simple model requirements applicable to refinery compliance, other than the requirements for sulfur, olefins and T90, would it still be necessary to segregate early use complex model gasoline?

**Answer:**

1. Background.

The requirements for segregating early use complex model gasoline throughout the system, under § 80.78(a)(9), is based upon concerns regarding enforcement of standards downstream, e.g., at retail stations, and the effect complex model gasoline would have on the compliance survey. If complex model and simple model gasoline were freely mixed, or if early complex model gasolines from different refineries were mixed, downstream enforcement would be severely complicated since commingled complying gasolines might not meet all of the standards that are enforced downstream. Furthermore, it would not be apparent against which standards such gasoline should be judged for compliance. Similarly, with the compliance survey, it is required that a complex model survey component and a simple model survey

component be performed.<sup>7</sup> If simple and complex model gasolines were commingled, survey results could not be appropriately judged against either complex or simple model standards. Both the enforcement concerns and the compliance survey concerns relate, in part, to the possibility that complex model gasoline may not meet the downstream simple model standards specified in §§ 80.41(a) and (b).

## 2. Alternative simple model compliance approach.

Certain of the advantages of the early complex model may be obtained without creating the problems associated with commingling simple and complex gasoline, however, and without compromising the environmental benefits intended for reformulated gasoline, in the case of reformulated gasoline that meets a combination of certain of the simple model standards and the early complex model standards.<sup>8</sup> In particular, reformulated gasoline certified under the simple model that meets all of the simple model standards except the standards for sulfur, T-90 and olefins, and that also meets all the early complex model standards, would not create the enforcement and survey difficulties anticipated by § 80.78(a)(9). In effect, this would be simple model gasoline for which an alternative approach is used for showing compliance with the simple model standards for sulfur, T-90 and olefins.

Reformulated gasoline produced under this alternative simple model compliance approach would be fungible with other simple model reformulated gasoline downstream of the refinery, because the simple model standards for sulfur, T-90 and olefins are not included in the calculation of any other simple model standards. The environmental benefits associated with the simple model standards for sulfur, T-90 and olefins would be achieved through compliance with the early complex model standards for VOC, toxics and NOx emissions performance. Reformulated gasoline that meets all early use complex model standards would be at least as environmentally clean, and possibly cleaner than, comparable simple model gasoline.

Provided that a refiner or importer has completed the notification and reporting requirements discussed below, and has met all other requirements discussed in this Answer, the party would have the option at the conclusion of an averaging period of showing compliance with either (1) all of the simple model standards, including the standards for sulfur, T-90 and olefins, or (2) all of the simple model standards except the standards for sulfur, olefins and T90 and all early complex model standards.<sup>9</sup> The party must show compliance through one of these options, and may use only one of these options for all reformulated gasoline produced at a refinery, or imported by an importer, during the calendar year averaging period.

Under § 80.41(h)(2)(iii) a refiner that operates more than one refinery must meet the simple model standards for sulfur, T-90 and olefins using the same refinery aggregations that are elected for conventional gasoline compliance under § 80.101(h). As a result of this grouping requirement, a refiner

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<sup>7</sup> Since no refiners have notified the Agency as required that they intend to utilize the allowance for early use complex model gasoline, up to this point, the Agency is considering the approval of survey plans which do not include a complex model survey component. Such a plan was approved in 1994 for 1995.

<sup>8</sup> The alternative simple model compliance approach discussed in this Answer applies to reformulated gasoline, and not to conventional gasoline. See the conventional gasoline discussion, below.

<sup>9</sup> Refiners and importers also would retain the early complex model option as promulgated under § 80.41(j), but subject to the segregation constraints specified under § 80.78(a)(9) and the advance notification requirements under § 80.75(k).

who operates refineries that are aggregated under § 80.101(h) must make the same election regarding the alternative simple model compliance approach discussed in this Answer for each refinery in an aggregation. For example, consider a refiner who operates refineries A, B and C and who elects under § 80.101(h) to aggregate refineries A and B. If this refiner elects to use the alternative simple model compliance approach for refinery A this same election also must be made for refinery B. The refiner could make a different election for refinery C, however.

3. Standards under the alternative approach.

The simple model standards are specified in §§ 80.41(a) and (b) (for oxygen, benzene and toxics emissions performance, and RVP in the case of VOC-controlled reformulated gasoline) and in § 80.41(h)(2)(i) (for sulfur, T-90 and olefins). Under the alternative simple model compliance approach only the standards for oxygen, benzene, RVP and toxics emissions performance must be met.

The Phase I complex model includes standards for oxygen and benzene that are identical to the simple model standards for these parameters, and standards for VOC, toxics and NO<sub>x</sub> emissions performance. Under early use complex model, however, the VOC, toxics and NO<sub>x</sub> emissions reduction levels specified in §§ 80.41 (c) and (d) are not used. Instead, under § 80.41(j) refinery- or importer-specific reduction levels for these emissions performances are calculated using, in part, the refinery- or importer-specific baseline values for sulfur, E-300 and olefins.

Under § 80.65(c) a refiner or importer must elect to meet the early complex model VOC, toxics and NO<sub>x</sub> standards either on average or on a per-gallon basis. This election also applies under the alternative approach to simple model compliance. The per-gallon versus average election must be made by importers, and by refiners separately for each refinery. Moreover, this election must be made separately for each of the three emissions performance requirements. In the case of a refiner or importer opting for average compliance for VOC or NO<sub>x</sub> emissions performance, each batch of reformulated gasoline would be subject to the per-gallon minimum standards that are set in conjunction with the average standards. There is no per-gallon minimum associated with the toxics emissions performance average standard. In the case of a refiner or importer opting the per-gallon standards for either VOC, toxics or NO<sub>x</sub> emissions performance, each batch of reformulated gasoline would be subject to the per-gallon standard.

Under § 80.41(j) the early complex model standards for VOC, toxics and NO<sub>x</sub> emissions performance are calculated separately for the per-gallon and average standards, and for the per-gallon minimum associated with the average standard. These calculations are based on:

- The per-gallon standards for oxygen, benzene and RVP under § 80.41(a) (in the case of standards that are met on a per-gallon basis), the average and per-gallon minimum/maximum standards for oxygen, benzene and RVP under § 80.41(b) (in the case of standards that are met on average);<sup>10</sup>
- The applicable aromatics value, as specified at § 80.41(j)(2); and

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<sup>10</sup> Separate summer and winter standards must be calculated for NO<sub>x</sub> and toxics with the complex model. For summer, the appropriate RVP from § 80.41(a) or (b) should be used. For winter, an RVP of 8.7 should be used. In order to determine annual standards for NO<sub>x</sub> and toxics, the statutory volume weighting should be applied to the seasonal standards. The statutory volume weighting is 0.396 for summer and 0.604 for winter

- The refinery's or importer's baseline values for sulfur, E-300 and olefins.<sup>11</sup>

Under § 80.67(a) a refiner or importer may meet the reformulated gasoline standards on average only if the survey requirements of § 80.68 are met. Nevertheless, a refiner or importer using the alternative simple model compliance approach could elect to be subject to the average early complex model standards for VOC, toxics or NO<sub>x</sub> emissions performance without having met the survey requirements.<sup>12</sup> This departure from the requirements of § 80.67(a) is appropriate because the gasoline produced under the alternative simple model compliance approach is classified as simple model gasoline for purposes of the gasoline quality surveys, and no separate complex model surveys would result from operation of this approach.

If during any averaging period, including the 1995 averaging period, any batch of reformulated gasoline produced at a refinery or imported by an importer failed to meet the per-gallon or minimum VOC, toxics or NO<sub>x</sub> emissions performance standards discussed above, that refinery or importer would be ineligible for the alternative simple model compliance approach for that averaging period.

The approach discussed in this Answer would not change the manner in which oxygen or benzene credits are created, transferred or used. Oxygen and benzene credits are used only to show compliance with the oxygen and benzene standards, and compliance with all other standards must be shown on the basis of the quality of gasoline produced or imported exclusive of any credit transfers.

#### 4. Testing requirements under the alternative approach.

Under § 80.65(e) a refiner or importer is required to determine certain properties for reformulated gasoline prior to the gasoline leaving the refinery or import facility. In the case of reformulated gasoline subject to the simple model standards, these parameters are limited to oxygen and benzene, and RVP for VOC-controlled reformulated gasoline. In contrast, reformulated gasoline subject to the complex model standards must, prior to release, be analyzed for the full slate of properties specified under § 80.65(e). Any reformulated gasoline produced under the alternative simple model compliance approach is classified as simple model gasoline, and, in consequence, the refiner or importer is required only to meet the simple model pre-release sampling and testing requirements. This approach is appropriate because the purpose of the pre-release sampling and testing is to ensure compliance with the downstream standards, and only the simple model downstream standards apply under the alternative simple model compliance approach.

#### 5. Application of model valid range limits.

Since under the alternative approach to simple model compliance reformulated gasoline must meet all the requirements of the early-use complex model as well as all the standards under the simple model (except for the caps on sulfur, olefins, and T90), every batch of reformulated gasoline produced or imported under this approach must meet the valid range limits specified for the simple model in § 80.42(c) and those specified for the complex model in § 80.45(f)(1)(i). These valid range limits delineate the range of values within which the compliance models may be used, and outside of which they may not be used. Therefore, the more stringent valid range limits would apply to every batch. For example, for aromatics

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<sup>11</sup> In the case of a refiner who has aggregated refineries under § 80.101(h), the volume-weighted average baseline values for sulfur, E-300 and olefins for all refineries in the aggregation would be used.

<sup>12</sup> A refiner or importer who elects to meet the standards for oxygen, benzene, RVP or simple model toxics emissions performance on average would be required, under § 80.67(a), to meet the survey requirements.



content the simple model valid range limits are 0 through 55 vol%, while the complex model valid range limits are 0 through 50 vol%. Thus, no batch of reformulated gasoline produced under the alternative simple model compliance approach could have an aromatics content greater than 50 vol%.

As discussed above, under the early-use complex model a refiner or importer must determine the VOC, toxics and NO<sub>x</sub> standards with which its reformulated gasoline must comply according to § 80.41(j), based in part on a refinery's or importer's individual baseline levels for sulfur, olefins and E-300. It is possible, however, that a refinery's or importer's baseline values for one or more of these three parameters may fall outside the valid range limits given in § 80.45(f)(1)(i). If this is the case the refiner or importer nevertheless may use the alternative simple model compliance approach by substituting the § 80.45(f)(1)(i) valid range limit for the baseline parameter outside the valid range. Thus, for example, if a refiner has a baseline olefins level that is greater than the 25 vol% limit under § 80.45(f)(1)(i), the refiner may use a value of 25 vol% for purposes of calculating the early complex model standards under § 80.41(j). Note that this flexibility does not apply to any batch of reformulated gasoline produced under this alternative simple model compliance approach; every batch of reformulated gasoline must have fuel parameters which fall within the complex model range limits specified in § 80.45(f)(1)(i).

#### 6. Implications of alternative approach for conventional gasoline.

Any reformulated gasoline for which compliance is achieved under this alternative approach is classified as simple model reformulated gasoline, as described above. As a result, under §§ 80.41(i)(1)(ii)(A) and 80.101(c)(1)(i) any conventional gasoline produced at the same refinery or imported by the same importer also must comply with the simple model standards under § 80.101(b)(1). Consequently, the complex model valid range limits, discussed above, are not relevant to the conventional gasoline produced or imported under this approach. The approach discussed in this Answer would not, however, alter the opportunity for a refiner or importer who produces no reformulated gasoline to produce conventional gasoline in compliance with the optional complex model standards under § 80.101(b)(2).

#### 7. Notification and reporting.

Any refiner or importer who intends to have the option of using this alternative simple model compliance approach for any calendar year averaging period must notify EPA of this intent with the first quarterly report for that year (due on May 31 of each year). This notification must be made as part of the annual compliance designation, and also must specify, separately for VOC, toxics and NO<sub>x</sub> emissions performance, whether the early complex standard will be met on a per-gallon basis or on average. In addition, the party must include in all batch reports the information necessary to show compliance with both the simple model standards and the early complex model standards. This reporting requirement is discussed more fully below.

In the case of the 1995 averaging period, however, a party could not have satisfied this notification requirement. Therefore, a party who otherwise qualifies may use the alternative simple model compliance approach provided that an updated designation report is submitted with the report for the fourth quarter of 1995 (due on February 29, 1996), and batch reports for all batches produced or imported during the 1995 averaging period are resubmitted at that time to include the necessary information, specified below. EPA will release a revised Annual Compliance Designation form prior to that time.

EPA will modify its "Reformulated Gasoline and Anti-Dumping Electronic Data Interchange Technical Guideline" by adding the code "AS" (alternative approach simple model) to code list 07 (section 8.3.1) for use in properly designating gasoline produced under this method in batch reports submitted via EDI. Parties who will use this approach for 1995 and who have previously filed batch reports during 1995 via electronic data interchange (EDI) must resubmit all such batch reports with the correct designation no later than February 29, 1996. Only the compliance method (simple model, complex model, alternative

approach simple model) may be changed in these resubmissions.

The paper batch report will not be modified because the designation of simple or complex is not currently required on that report (it is covered by the designation form). If at the end of 1996 or 1997, after designating the alternative compliance method for the year, a party wishes to use the simple model standards specified in the regulations, the party may either resubmit the Annual Compliance Designation form or resend all EDI batch reports with the proper designation, and subject to the conditions laid out below, no later than the last day of February immediately following the reporting year.

Any party intending to use the approach discussed in this Answer must submit to EPA batch reports with all of the information required to demonstrate compliance with both simple model and early use complex model standards, as discussed above. This requirement applies to batches of reformulated gasoline or RBOB produced in 1994 or 1995 (which must be resubmitted) and to batches produced in 1996 and 1997. Reports previously submitted by independent laboratories need not be resubmitted, however. In addition, in the case of a sample collected by an independent laboratory during the fourth quarter of 1995 which was not analyzed for complex model parameters, if the sample is no longer available the independent laboratory may report only the simple model parameters for that sample.

Additionally, since parties using this alternative approach are making early use of the complex model, they must submit to EPA, at the time of designation, a letter stating the calculated early-use complex model VOC, toxics and NO<sub>x</sub> emissions performance standards applicable to each refinery, or to each importer, which will use this method. The calculation and reporting of these standards is detailed above, and in §§ 80.41(j) and 80.75(k). On their batch reports, refiners and importers must then report their VOC, NO<sub>x</sub> and toxics emissions performance as a percent reduction from these emission standards rather than from the statutory baseline emission standards.

Consider, for example, a refiner whose refinery's calculated early-use complex model per-gallon emissions standards are 1036.82 mg/mi for VOC, 38.4311 mg/mi for toxics and 691.6079 mg/mile for NO<sub>x</sub>. This refiner has elected to meet the early complex model standards on a per-gallon basis. A batch of gasoline produced shows emissions results from the complex model of 1007.53 mg/mile of VOC, 37.0122 mg/mile of toxics and 697.3742 mg/mile of NO<sub>x</sub>. The refiner would report emissions reductions of 2.8% for VOC (29.29 mg/mi below the applicable standard), 3.7% for toxics (1.4189 mg/mi below the standard) and -0.8% for NO<sub>x</sub> (5.7663 mg/mi above the standard). This batch would be in violation of the early-use complex model NO<sub>x</sub> standard, because the NO<sub>x</sub> emissions performance shows a 0.8% increase in NO<sub>x</sub> emissions (a -0.8% reduction) relative to the refinery's early complex model NO<sub>x</sub> standard. (1/22/96)

**10. Question:** Under the alternative Simple Model as described in a Question and Answer dated January 22, 1996, segregation of alternative Simple Model and Simple Model RFG is not required. Must conventional gasoline produced under the Simple Model be segregated from conventional gasoline produced under the early Complex Model?

**Answer:** There is no requirement for the segregation of Simple Model and early-use Complex Model conventional gasoline. In addition, the alternative Simple Model approach does not apply to conventional gasoline, so this RFG alternative does not alter the conventional gasoline requirements. (5/2/96)

**11. Question:** In terms of setting standards for reformulated gasoline according to §80.41(j), what is the difference between the early-use Complex Model and the alternative Simple Model approach as described in a Question and Answer dated January 22, 1996?

**Answer:** The process of setting standards for RFG is exactly the same under the early-use

Complex Model or the alternative Simple Model. The alternative Simple Model approach requires that a refiner meet standards set under the early-use Complex Model as well as all the standards under the Simple Model, except for the caps on sulfur, olefins, and T90. (5/2/96)

## B. LIABILITY AND DEFENSES

1. **Question:** Are the liability and defense provisions of this rule structured similarly to those adopted by EPA in its prior motor vehicle fuel programs?

**Answer:** Yes. The RFG liability and defense provisions are closely modeled after other motor vehicle fuel programs, such as unleaded gasoline, volatility, and diesel sulfur. The final rule establishes liability for a number of prohibited activities that may occur downstream of the refinery or importer. When such a violation is found, the following parties are presumed liable: the operator of the facility at which the violating gasoline is found, and each upstream party, other than carriers, that supplied any of the gasoline found to be in violation. In general, carriers are liable if they cause a violation at a downstream facility. In the case of a facility operating under the brand name of a refiner or importer, that refiner or importer also is presumed liable regardless of whether the refiner supplied any of the gasoline found in violation.

A party presumed liable may establish an affirmative defense by showing: (1) that they did not cause the violation; (2) that product transfer documents indicate the gasoline in question met all relevant requirements; and (3) that they conducted a sufficient quality assurance program. Additional elements must be shown by refiners or importers for violations at branded facilities. These liability and defense provisions are specified at 40 C.F.R. § 80.79.(7/1/94)

2. **Question:** Must each batch of gasoline be traceable from the refinery or importation point to consumption in order to avoid liability if a non-conformance is found?

**Answer:** No. However, each regulated party (other than a carrier) is presumptively liable for violations of the downstream standards found at facilities downstream from that party. In order to establish a defense the party must show, among other defense elements, that it did not cause the violation. A party normally is able to establish this "did-not-cause" defense element for a violation of a downstream standard by showing through test results that the gasoline in question met all applicable standards when the gasoline was passed to the next downstream party. As a result, a party should be able to "trace" its own gasoline to the extent necessary to be able to identify the specific gasoline supplied to the next parties in the distribution system, and the quality of that gasoline.(7/1/94)

3. **Question:** Will a regulated party's defense fail if test results indicate the product is over the standard but within the EPA announced test tolerance?

**Answer:** As discussed in the Enforcement Tolerance section of this document, all gasoline downstream of the refinery or importer level may be released if test results for each parameter show the gasoline to be within the applicable standard plus the tolerance for that parameter, provided all other RFG requirements are met.

As a result, in the case of a violation of a downstream standard, a party who is presumptively liable could establish the quality assurance defense element if all of that party's test results are, for each parameter with a downstream standard, within the applicable standard plus the tolerance for that parameter.(7/1/94)

4. **Question:** Company A owns and operates a terminal which it uses exclusively to store finished gasoline. It leases a small portion of its tanks to Company B, who uses the tankage to purchase and blend components together to make gasoline. How can Company A protect itself from liability for a

violation detected in one of the leased tanks?

**Answer:** The definition of "refiner" includes any person who owns, leases, operates, controls or supervises a refinery. Therefore, under this scenario, both the person who owns the gasoline being blended, and the person who owns the terminal tanks would be considered to be refiners. Each person meeting the definition of refiner for a particular refinery operation is independently responsible for the completion of all refinery requirements, such as meeting standards, sampling and testing (including independent sampling and testing), record keeping, reporting, and independent audits. However, these refinery requirements must be met only once for any refinery operation. As a result, if the refinery requirements are properly accomplished by one "refiner" for a particular refinery operation, EPA will consider the requirement to have been accomplished by each person who meets the definition of refiner for that operation.

In the scenario described in the question, Company A could rely on Company B to meet the requirements for that refinery operation. If Company B does not properly meet all the refinery requirements, however, both Company B and Company A would be independently liable for the violation. As a result, Company A should allow Company B to conduct a refinery operation at Company A's facility only if: (1) Company A intends to meet the refinery requirements for the operation; or (2) Company A is fully satisfied Company B will meet these requirements. In addition, should Company A rely on Company B to meet these requirements, Company A should monitor the operation to ensure Company B in fact meets all refinery requirements.<sup>(7/1/94)</sup>

**5. Question:** If a refiner produces gasoline at the direction and to the specifications of a distributor who will ultimately purchase it, and a violation is discovered at the refinery, will both parties be jointly and severally liable for the violation? How can the distributor protect itself against liability for violations that occur at the refinery?

**Answer:** In a case where a refiner produces gasoline to specifications that are set by a distributor, and where that gasoline does not meet applicable refiner-level standards, the refiner who actually produces the gasoline clearly would be liable for the standards violation. It would be no defense for the refiner to argue that it only was following the directions of the distributor-transferee of the gasoline produced by the refiner.

In addition, in this scenario the distributor also could meet the definition of "refiner" for the refining operation and could be liable if the gasoline is found in violation of the applicable standards. Contracting for the production of gasoline would amount to "control" over the refining operation, which would result in the distributor-"refiner" being jointly and severally liable for the standards violation.

The distributor could protect itself against liability by including in the processing agreement only specifications for gasoline that meets all applicable standards, and by monitoring the quality of gasoline received from the refinery to ensure it in fact meets all applicable standards. In addition, if the distributor's relationship with the refinery operations is sufficiently close that the distributor, in effect, "operates, controls or supervises" the refinery operation, then the distributor would be a co-refiner. In such a case the distributor-"refiner" should take steps to ensure all the refiner requirements are met, including refiner and independent sampling and testing, record keeping, reporting, and attest engagements.<sup>(7/1/94)</sup>

**6. Question:** What documentation will be needed downstream to show certification of RFG?

**Answer:** Downstream of the refinery level, RFG may be considered to be "certified" if it is accompanied by product transfer documents, specified in § 80.77, that identify the gasoline as RFG. Of course, if downstream testing shows that gasoline does not meet applicable downstream standards, then the gasoline could not be considered "certified" RFG.<sup>(7/1/94)</sup>

7. **Question:** What RFG parameters should parties monitor as part of their downstream quality assurance programs?

**Answer:** Parties should monitor the applicable downstream standards as part of their downstream quality assurance programs under § 80.79(c). These are: under the simple model, oxygen and benzene, and RVP in the case of VOC-controlled RFG; and under the complex model, oxygen, benzene, and NOx emissions performance, and VOC emissions performance in the case of VOC-controlled RFG.<sup>(7/1/94)</sup>

8. **Question:** What field test methods are acceptable for oversight programs?

**Answer:** For purposes of meeting the downstream quality assurance defense element, parties may use any test method, so long as that method is performed in accordance with sound engineering and laboratory principles in a manner which provides reasonable correlation to the methods specified in § 80.46.<sup>(7/1/94)</sup>

9. **Question:** Since other ASTM methods are being developed that would allow use of one analyzer to obtain benzene, aromatics, and olefins, will EPA allow any of these new methods to be used in reformulated gasoline certification and/or a refiner's defense?

**Answer:** A refiner that intends to distribute RFG must certify that product using the test methods prescribed in the Final Rule. However, a refiner performing quality assurance testing downstream of the refinery may use other test methods provided these methods have been correlated with EPA's test methods.<sup>(7/1/94)</sup>

10. **Question:** If RFG is shipped from a refinery to a terminal through a proprietary pipeline system, may the pipeline rely on the refinery and terminal test results to satisfy the quality assurance defense element?

**Answer:** In a case where EPA documents a downstream standard violation at a proprietary terminal that is served only by a proprietary pipeline that receives gasoline only from a proprietary refinery, the company that owns the refinery, pipeline and terminal (Refiner A) would be presumptively liable for the violation. The quality assurance defense element would not be a factor in such a case because Refiner A would not be able to establish the first defense element - that it did not cause the violation (no other party could have cause a standard violation under such a scenario).

If EPA documents a downstream standard violation at a facility downstream from Refiner A's terminal, e.g., at a retail outlet supplied by this terminal, Refiner A would be presumptively liable for the violation. In such a case, Refiner A could establish the did-not-cause defense element through test results from the terminal showing that all gasoline dispensed met all applicable standards. In addition, because of the unique proprietary refinery-pipeline-terminal scenario, Refiner A could meet the quality assurance program defense element using test results from the refinery and terminal, with no tests collected from the pipeline itself, provided the tests are designed to monitor the various types of violations that could occur during pipeline movements.<sup>(7/1/94)</sup>

11. **Question:** If a refiner sends RFG to an intermediate party who inadvertently sends it to a region with stricter parameters, is the refiner liable provided the refiner otherwise meets all the elements of its defense?

**Answer:** In a case where a party (Party A) delivers RFG to another party (Party B), and the gasoline when delivered meets all applicable standards and is accompanied with product transfer documents as required under § 80.77 that inform Party B of the proper time and place of use for the gasoline, Party A normally would not be responsible if Party B later uses this gasoline in a time or place

that is not proper. Party A could be liable for this later improper use by Party B, however, if Party A either knew or reasonably should have known of the improper use by Party B, and did not take steps to prevent the violation.

For example, consider a case where a large volume of non-VOC controlled RFG is delivered to a terminal on April 30, and a violation of the VOC standard is discovered on May 1. In this case the distributor who sold this gasoline to the terminal would be liable for the violation (in addition to the terminal-distributor), because the seller-distributor knew or should have known the delivery would result in a violation.

Another example would be a case where a terminal-distributor located in Philadelphia - which is in VOC-control Region 2 - intends to dispense gasoline that is properly identified for that Region into a truck for retail delivery. If the truck loading documents identify a delivery location in Baltimore - which is VOC-control Region 1 - the terminal-distributor would know or reasonably should know of the impending improper gasoline use. If the terminal-distributor nevertheless dispenses the gasoline, the terminal-distributor would be liable for this violation.

These examples illustrate EPA's requirement that parties may not operate in a manner that will cause violations by other parties, and may not supply gasoline to another party if it is known (or reasonably should be known) that party will use the gasoline in a manner that violates the regulations. In a situation where a party knows or should know that gasoline in its control has been or will be used in violation of the regulations, EPA requires the party take affirmative steps to prevent the violation. If another person refuses to cooperate in the violation prevention, the party should discontinue doing business with that person.<sup>(7/1/94)</sup>

12. **Question:** What constitutes "periodic sampling and testing"?

**Answer:** EPA has not defined the frequency or scope of sampling and testing that is necessary to meet the quality assurance program defense element, because there is no single program that is appropriate in all situations. In addition, EPA believes that regulated parties are most familiar with their own operations, and therefore are in the best position to design quality assurance programs that are adequate to ensure the RFG standards are met. Factors that EPA believes are relevant in designing an RFG quality assurance program are: the results of previous sampling; the volume of gasoline in a particular batch (the larger the volume, the greater the justification for sampling and testing that batch); the degree of confidence in the quality of the gasoline which was received; the opportunity for violations while the gasoline is in the possession of the party (e.g., the opportunity for commingling of RFG and conventional gasoline); and the opportunity to deliver RFG in a manner inconsistent with the proper time and place of use.<sup>(7/1/94)</sup>

13. **Question:** How can a distributor meet the defense elements in the case of gasoline that is obtained from another distributor's terminal through an exchange agreement?

**Answer:** In the case of a downstream standard violation found at the retail level, under § 80.79(a)(3) each distributor who sold, transported, or stored any of the gasoline found to be in violation is presumed liable, and in order to establish a defense under § 80.79(b), in addition to other defense elements must show evidence of quality assurance program. As a result, in the case of an exchange agreement, presumptive liability would apply both to the distributor who sold the gasoline to the retail outlet, and to the terminal-distributor who supplied the gasoline in question.

The terminal-distributor could meet the did-not-cause and the quality assurance program defense elements through test results that show the gasoline in question met all applicable standards when dispensed. The seller-distributor could rely on the terminal-distributor's testing to show the gasoline met

applicable standards when dispensed from the terminal, if this testing is properly performed.

Assuming the terminal-distributor has adequate test results, the more difficult defense element for the seller-distributor would be showing it did not cause the violation through the delivery truck, for example by mixing with conventional gasoline from a prior truck load. This did-not-cause showing by the seller-distributor would be necessary even in a case where a common carrier truck is used to deliver the gasoline (where the seller-distributor never had physical custody of the gasoline), because the truck carrier is acting as the agent of the seller-distributor.

For practical purposes, the most likely way a seller-distributor could show it did not cause a violation found at a retail outlet is to show who or what did cause the violation. For example, if it could be shown that the violation was caused by delivery from another distributor of gasoline that was off-spec, the seller-distributor would establish the did-not-cause defense element.

Of course, if the seller-distributor has test results from the delivery truck showing the gasoline delivered to the retail outlet met all applicable standards, the seller-distributor would be able to establish a full defense.

In addition, in order to establish a defense the seller-distributor must present evidence of a quality assurance program of sampling and testing, as specified in § 80.79(b)(1)(iii), and product transfer documents for the gasoline in question that indicate the gasoline met all relevant requirements, as specified in § 80.79(b)(1)(ii).<sup>(7/1/94)</sup>

**14. Question:** Will oversight programs and paper trail need to extend to conventional gasoline in order to comply with anti-dumping?

**Answer:** The requirements of the anti-dumping program apply only to refiners and importers. As a result, there are no downstream standards or requirements for conventional gasoline, other than those related to the prohibitions against using conventional gasoline in RFG areas, against commingling RFG and conventional gasoline and the requirement to generate transfer documents that correctly identify the gasoline as conventional. Other requirements related to gasoline quality, such as volatility, continue to apply to conventional gasoline, however.<sup>(7/1/94)</sup>

**15. Question:** Must downstream parties with their own labs use an independent lab for quality assurance sampling and testing?

**Answer:** Parties may use their own lab, an independent lab, or another party's lab in fulfillment of the quality assurance program defense element. Regardless of which lab does the work, however, the burden remains on the party who is presumed liable to demonstrate that the samples were properly collected and the testing was properly performed.<sup>(7/1/94)</sup>

**16. Question:** If terminals utilize the services of outside laboratories for periodic sampling and testing, how can the terminal limit exposure to liability in the event non-complying product from the tested tank(s) leaves the terminal during the three or four days before test results are available?

**Answer:** A terminal-distributor's release of RFG that does not meet applicable standards would constitute a violation of § 80.78(a)(1) for which the distributor would be liable, and it would not be a defense if the violation was caused by a delay in receipt of test results. A terminal-distributor could limit its exposure for such violations, however, by performing as much testing as possible at the terminal. For example, the parameters for which downstream standards apply under the simple model are RVP, oxygen, and benzene. EPA is aware of - and intends to use - field test equipment for these parameters. This field test equipment is appropriate for use by terminal-distributors at terminals, and if used would

allow parties to avoid violations from the cause described in the question, at least until the complex model becomes effective in 1998.

Similar field test equipment may be available for use under the complex model. Before 1998 there likely will be advances in testing equipment technology that will allow more field testing of the complex model parameters. EPA hopes to develop complex model screening protocols that are appropriate for use in the field. To the extent these advances materialize, terminal-distributors will be able to monitor RFG quality without the time lag inherent when outside labs are used.<sup>(7/1/94)</sup>

17. **Question:** May survey samples be used as a substitute for a refiner's quality assurance program for enforcement purposes?

**Answer:** Surveys may not be used as a substitute for a regulated party's own quality assurance program.<sup>(7/1/94)</sup>

18. **Question:** Will oversight programs need to be designed differently for per-gallon versus averaging?

**Answer:** The distinction between RFG certified under the per-gallon versus the average standards only applies at the refinery or importer level. The only standards that apply downstream are per-gallon maximum and minimum standards associated with average standards. Therefore, the downstream quality assurance program defense element is the same regardless of whether RFG is produced to an average standard or per-gallon standard.<sup>(7/1/94)</sup>

### C. PENALTIES

1. **Question:** A refiner elects to meet a RFG specification via the "averaging" method. Two-thirds of the way through the averaging period, his tracking of cumulative qualities shows he is just meeting the standard. For the remaining last third of the averaging period the gasoline stays within the maximum or minimum RFG limits but exceeds the averaging standard. As a result the average for the averaging period is off-spec. Ignoring the purchase of credits for oxygen or benzene standards, is the refiner liable for a daily penalty over the entire averaging period, or only the number of days in the last third of the averaging period?

**Answer:** Section 80.80(c) provides that the refiner would be liable for a daily penalty over the entire averaging period.

Refiners, for each refinery, and importers, must elect to comply with each standard on a per-gallon or average basis at the start of each compliance period. These elections then are applicable throughout that compliance period. During the rulemaking, EPA considered whether to allow refiners and importers to declare their method of compliance on a batch-by-batch basis. This option was rejected out of EPA's concern that a batch-by-batch determination would result in exceedances of nationwide levels for regulated parameters. See 59 Fed. Reg. 7770.

Accordingly, refiners are permitted the flexibility associated with averaging to achieve compliance over the whole compliance period, including the provision to adjust averages through the use of credits only in the case of parameters for which the averaging compliance approach is selected. Moreover, once the option of using an average standard is made, a refiner may not change to the per-gallon standard for that parameter during the averaging period, and an exceedance of the average standard represents a violation of that standard for each day of the averaging period.

The maximum penalty for violations of average standards is \$25,000 per violation for each day in the averaging period, plus the economic benefit or saving to the violator. EPA intends to develop a



penalty policy that will be used to calculate penalties for use during the administrative phase of enforcement actions, which will take into account factors such as the gravity of the violation, the economic benefit or savings resulting from the violation, the size of the violator's business, the violator's history of compliance with the gasoline quality requirements, and actions taken to remedy the violation.<sup>(7/1/94)</sup>

2. **Question:** Will EPA waive penalties imposed for late reports if reports are late due to mechanical or electronic failures?

**Answer:** EPA will not waive penalties arising from late reporting. Reports must be submitted within the times specified in the regulations. EPA believes that parties have ample time (approximately 60 days) to prepare and submit reports following each reporting period. In an individual case where a report is filed late for reasons shown by the reporter to be outside of the reporter's control, EPA may exercise enforcement discretion in determining what enforcement action is appropriate.<sup>(7/1/94)</sup>

#### D. INSPECTIONS AND AUDITS

1. **Question:** How often does EPA expect to audit refiners, importers, and distributors? Will such audits be conducted by EPA personnel or contract personnel?

**Answer:** The frequency of audits conducted at the above facilities will depend on a number of factors such as: general compliance rates, compliance history of individual facilities, EPA budget allowances, etc. Based upon the experience of past fuels enforcement programs, it is expected that the above facilities would be audited no more than once per year, unless circumstances would require audits at a greater frequency. These audits will be performed by both EPA and contract personnel.<sup>(7/1/94)</sup>

#### E. REMEDIES

1. **Question:** If reformulated gasoline is found downstream of the refinery to be off specification, what procedures are appropriate for handling this gasoline?

**Answer:**

##### Downgrading

In a case where RFG is found to violate any downstream standard, a party may take remedial action for the violation by reclassifying the RFG as conventional gasoline (by "downgrading" the gasoline), and using the gasoline only outside any RFG covered area. The downgraded gasoline must be segregated from all RFG, and the product transfer documents must identify the gasoline as conventional gasoline. There is no requirement that such downgraded gasoline must be included in any downstream party's anti-dumping compliance calculations, however.

If RFG that is designated as VOC-controlled is found to violate a 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.<sup>13</sup> 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.

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<sup>13</sup> The standards that apply only to VOC-controlled RFG are: RVP under the simple model; VOC emissions performance under the Phase I complex model; and VOC emissions performance and a separate NOx emissions performance standard under the Phase II complex model.

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 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.

When RFG is downgraded, the party should document the circumstances that gave rise to the downgrading. The gasoline in question should be segregated from gasoline having the higher classification, the product transfer documents for the gasoline in question should be changed to the downgraded classification, and the gasoline must not be sold, dispensed, or transported in a manner that is inconsistent with the downgraded classification.

#### Storage

If during the VOC control period RFG is discovered that does not meet applicable VOC control standards, remedial action for the violation may consist of storing the gasoline in place until the end of the VOC control season on September 16. In such a case, the gasoline must be segregated from gasoline that meets the VOC control standards, documents associated with the gasoline must clearly state the gasoline is not VOC-controlled, and the gasoline must be sealed to prevent its accidental use in advance of September 16.

#### Blending With Additional RFG

Parties may blend additional RFG with RFG that is discovered to be off-spec a means of remedial action for the violation, subject to certain constraints,<sup>14</sup> to bring the mixture within all applicable standards. In such a case, subsequent to blending the RFG must be sampled and tested to meet all applicable RFG downstream standards.

#### Blending With Oxygenate

Section 80.78(a)(6) prohibits the blending of any oxygenate with RFG, except that oxygenate may be blended with RFG that is designated as OPRG provided the RFG is used in an oxygenated fuels program area during the oxygenated fuels control period. As a result, any oxygenate may be blended with RFG provided the RFG is designated as OPRG and is used in an oxy fuels program as specified in § 80.78(a)(6). In addition, only in the case of remediation for RFG that violates a downstream standard and regardless of whether the RFG is designated as OPRG or not-OPRG or whether the RFG is used in an oxy fuels program, oxygenate may be blended with off-spec RFG. Whenever oxygenate blending is used as a remedial action, subsequent to blending the RFG must be sampled and tested to meet all applicable RFG downstream standards and requirements, including in the case of VOC-controlled RFG the RVP or VOC emissions reduction standards and the prohibition against mixing ethanol and other oxygenates, and the maximum oxygen content standards. Moreover, any mixture of oxygenates in the

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<sup>14</sup> The constraints on fungible mixing are discussed in the Transition Issues Section, Question 4, and preclude: the mixing of ethanol-based VOC-controlled RFG with non-ethanol-based VOC-controlled RFG during the period January 1 through September 15 of each year; the mixing of RFG designated as OPRG with RFG that is not designated as OPRG; and the mixing of simple model and complex model RFG.

resulting blend must conform to an approved oxygenate blend. Allowable oxygenate mixtures are discussed in the Oxy Fuel Section of this document.

The party performing remedial oxygen blending does not need to be registered as an oxygenate blender.

Each of the remedial actions discussed in this answer would be appropriate at all stages in the gasoline distribution system, including pipelines and terminals, and retail outlets and wholesale purchaser-consumer facilities. These remedial actions also would be appropriate for use by refiners and importers who discover that RFG is off-spec subsequent to the gasoline being shipped from the refinery or import facility.

On any occasion when a party takes remedial actions for an RFG violation, using any of the mechanisms discussed in this answer, the party should retain documents that reflect: the reason the party believed the gasoline to be in violation (e.g., test results); the actions taken to correct the violation; and any actions taken to prevent future violations.<sup>(11/10/97)</sup>

**2. Question:** May RFG that is found to be off-spec downstream of the refinery or import facility be corrected by blending "clean" non-oxygenate blendstocks?

**Answer:** Any party who combines blendstocks other than oxygenate with RFG is producing gasoline, and must meet all the RFG standards and requirements applicable to a refiner. In addition, all applicable RFG standards must be met by the blendstock only. The blendstock, therefore, in effect must be RFG, and such blending is the equivalent of blending RFG with RFG.

A party who does not meet the RFG refiner standards and requirements can take remedial action for RFG that violates applicable standards using the methods discussed above in Question 1.<sup>(7/1/94)</sup>

**3. Question:** If reformulated gasoline is found at the refinery to be off specification, what procedures are appropriate for handling this gasoline?

**Answer:** A case may occur where a refiner discovers RFG at a refinery that does not meet applicable standards, before that gasoline is shipped from the refinery. For example, RFG for which a parameter is being met on average could be found to violate the per-gallon minimum or maximum associated with that parameter, or RFG for which a parameter is being met on a per-gallon basis could be found to violate the per-gallon standard for that parameter.

In such a case, and because none of the gasoline in question has left the refinery, the refiner could prevent any violation by reblending the gasoline to meet all applicable standards before it is shipped. The reblended gasoline then would be a new batch for which the independent sampling and testing requirements must be met. In this situation, the earlier off-spec batch would be reported to EPA, but with a volume of zero. This earlier batch would have to be reported so that the refiner's and the independent lab's records remain synchronized.<sup>(7/1/94)</sup>

**4. Question:** If a party identifies RFG that is out of spec for a downstream standard, and the party wants to bring the gasoline back into spec by blending it with other RFG or with blendstock, must the party be registered with EPA as a refiner, and must the party meet all the requirements that apply to refinery operations for this blending activity?

**Answer:** If RFG at a location downstream of the refinery or import facility level is found to violate a downstream standard, a violation of the RFG requirements has occurred for which various parties will be liable, and for which penalties may be assessed by EPA. Section 205 (b) of the Clean Air Act instructs

that penalties for violations of the motor vehicle fuels requirements (including the RFG requirements) should take into account "action taken to remedy the violation...." As a result, penalty amounts for violations of the RFG requirements will depend, in part, on actions taken by liable parties to remedy violations. Thus, while remedial actions do not eliminate a violation, such actions normally do reduce the amount of any monetary penalty that must be paid.

In answer to Question 1 in the Remedies section (Section VII-E) of the July 1, 1994 RFG Question and Answer document, EPA described a number of remedial actions that parties may take to correct such a violation of a downstream standard. One of the remedies included in this July 1, 1994 answer was blending with additional RFG, which the party should document as specified in that answer. A party that carries out such remedial blending with RFG does not have to be a registered refiner, and need not meet the RFG refiner requirements, such as for independent sampling and testing and attest engagements. Separate refiner accounting for this type of remedial blending is not necessary because both the off-spec RFG and the blending RFG have already been included in the compliance calculations of a refiner or importer.

A party may take remedial action for a violation by blending with blendstock (a non-gasoline petroleum product), but only if the party is registered with EPA as a refiner, and meets all the refiner requirements. This is necessary because the blendstock used will constitute new RFG volume which must be accounted for. As a result, parties should register with EPA as a refiner in advance if they believe they may wish to conduct remedial blending with blendstock. If no blendstock blending occurs, there is no requirement to submit reports to EPA or meet any other refiner requirement. If the need for blendstock blending does occur, however, the party is in a position to do so.

If a party who has not registered with EPA as a refiner discovers a downstream standard violation, and the party believes blendstock blending is the most appropriate remedial action, the party should contact EPA. It may be possible in such a case for EPA to issue a refiner registration to the party in an expedited manner. The party should not ship any RFG produced through blendstock blending, however, until all refiner requirements have been met and the party has received a refiner registration number from EPA.<sup>(9/26/94)</sup>

**5. Question:** What downstream "remedies" are available if a batch of RFG is found to violate the minimum complex model VOC emissions reduction standard?

**Answer:** The remedies outlined in the December 5, 1994 RFG/Anti-dumping Questions and Answers document (VII.E.1) apply to complex model RFG that is found to violate the minimum VOC emissions reduction standard. <sup>(11/10/97)</sup>

## F. TEST TOLERANCES

**1. Question:** What are the EPA test tolerances for each controlled variable related to RFG?

**Answer:** The downstream test tolerance for RVP is 0.30 psi. The downstream test tolerance for oxygen is 0.30 wt%. The downstream test tolerance for benzene is 0.21 vol%.<sup>(7/1/94)</sup>

**2. Question:** Please clarify and resolve the significant digit differences existing between the standard and enforcement tolerance specified, i.e. 8.3 psi RVP with a 0.30 psi enforcement tolerance.

**Answer:** The significant digit differences between the RVP standard and the enforcement tolerance arise from EPA's desire to resolve any questions about rounding of RVP measurements when an enforcement tolerance has been applied. Accordingly, for example, the

0.30 psi RVP enforcement tolerance would preclude rounding of the second significant digit of the Rvp standard.(7/1/94)

**3. Question:** In its discussion of Enforcement Test Tolerances, EPA states that if test results "show the product to be above the standard, then the product is in violation regardless of whether or not it is within the tolerance." Since this is, technically, a violation how is this reconciled with the requirement that parties in the distribution chain must take corrective action to bring all product into compliance? Can we rely on stated EPA intention to bring no enforcement if samples are over the standard but within tolerance? Are records required for these instances?

**Answer:** Parties are expected to take corrective action when samples collected at locations downstream of the refinery or import facility exceed an applicable standard for a parameter plus the enforcement tolerance for that parameter. For example, if a distributor takes a sample of RFG taken from a storage tank at a terminal operated by that distributor that serves an RFG covered area, and this sample is analyzed to have a benzene content of 1.50 vol%, this result would be less than the benzene downstream standard (1.3 vol%) plus the benzene enforcement tolerance (0.21 vol%). As a result, the distributor would not be expected to take any action to reduce the benzene content of the RFG in the terminal. In addition, EPA would exercise its enforcement discretion and not pursue an enforcement action as a result of the distributor's test result. This answer would not change if the sample were collected and analyzed by EPA.

Note that the test tolerance does not apply to samples taken and tested at a refinery or import facility.

As a part of any quality assurance program, regulated parties should retain documents that reflect the results of sampling and testing, and any corrective actions that are taken.(7/1/94)

**4. Question:** Confirm that an RFG property measured from a sample collected during an EPA inspection is in technical violation if that property exceeds an applicable standard, but that no enforcement action will be brought by EPA unless the property exceeded the standard in question by at least the enforcement tolerance for that property.

**Answer:** As stated in the preamble to the RFG final rule, at 59 FR 7764 (February 16, 1994), EPA will not initiate an enforcement action on the basis of a test result from a gasoline sample collected at a facility downstream of the refinery or import facility, unless the test result exceeds the standard for a regulated parameter plus the enforcement tolerance for that parameter.(7/1/94)

**5. Question:** How will the term "tolerances" be interpreted as a practical matter by EPA as it relates to specifications? As a clarification, please respond to the following:

An importer who elects to comply on a "per-gallon" (vs. averaging) basis must meet an RVP maximum specification of 8.1 during the summer months. The EPA has established a 0.30 psi tolerance for this test. Consider the hypothetical, but likely situation whereby such an importer brings a cargo of RFG into New York Harbor which was determined by an independent inspector abroad to contain 8.1 psi at load. Upon discharge at New York Harbor by another independent inspector, the cargo was found to contain 8.3 psi. This second inspector's results are later confirmed by the EPA. Is this importer in compliance, due to the fact that the product conforms, within the established tolerances to the specifications established by EPA? Does the loadport analysis have any bearing on this matter? In the event the importer is found to be out of compliance, would he be subject to penalties under the Act? If so, would the loadport inspection certificate be construed as a satisfactory defense against an enforcement proceeding?

**Answer:** As stated in the Preamble to the Final Rule, 59 Fed. Reg. 7764, "refiners and importers may not use the tolerance to expand the applicable standard. Further, product must meet all applicable specifications when it leaves the refinery or import facility. If the refiner or importer results show the product to be above the standard, then the product is in violation regardless of whether or not it is within the tolerance." Further, under § 80.65(e) an importer is required to sample and test each batch of imported gasoline prior to the gasoline leaving the import facility. It is the importer's test result from the gasoline sample collected at the port-of-entry that is the basis for establishing the properties of the imported gasoline. Accordingly, under the hypothetical posed above, the test result of 8.3 psi RVP from the port-of-entry inspection would result in an EPA finding that the product is in violation of the regulations, and the importer would be liable for appropriate penalties.(7/1/94)

**6. Question:** Although min/max standards do not apply to sulfur, olefins and T90, these parameters are regulated for both conventional and RFG. What tolerances will be available for these parameters?

**Answer:** Under the simple model only oxygen and benzene, and RVP in the case of VOC-controlled RFG, will involve downstream EPA testing for enforcement purposes. EPA has not set enforcement tolerances for standards that apply at the refinery or importer level, such as sulfur, T-90, and olefins. Moreover, enforcement tolerances are only appropriate when measuring for per-gallon or min/max standards. Sulfur, olefins and T-90 are averaging standards. Therefore, EPA does not anticipate issuing enforcement tolerances for sulfur, T-90, or olefins.(7/1/94)

**7. Question:** Will the EPA allow certain pipeline companies to maintain their recently elected 1.18 percent maximum benzene specification, which could tighten supply into major RFG consuming areas?

**Answer:** EPA has no authority to allow or disallow gasoline specifications that are set by a pipeline or any other party, as long as they are in compliance with the applicable regulations.(8/29/94)

**8. Question:** In theory, each step of the RFG testing chain could yield varying (assuming increased) results due to reproducibility -- what is EPA's position on this?

**Answer:** It is up to the regulated parties to determine margins of safety. EPA does not get involved in this determination.(8/29/94)

**9. Question:** Exactly where will EPA define downstream and upstream in regards to applying enforcement test tolerances at refineries, including terminals registered as refineries? For example, does the enforcement test tolerance apply to RFG after it has been produced and certified at a refinery and transferred from the blending tank to other tankage at that refinery?

**Answer:** The enforcement test tolerances (which are relevant only to the "downstream standards" which are oxygen, benzene, and RVP) would apply to samples of RFG collected subsequent to movement of the RFG from the tank in which the certification sampling is conducted, even when these subsequent samples are collected within the refinery or import facility where the gasoline is produced or imported. Thus, a refiner or importer may conduct a quality assurance program of the RFG located at the refinery or import facility that previously has been certified, and use the "downstream" enforcement test tolerances when evaluating the quality assurance samples.(12/5/94)

10. **Question:** In the Preamble to the RFG Final Rule, EPA included an initial enforcement test tolerance for benzene of 0.21 vol%, and described a round robin testing process that would result in a final benzene test tolerance that would be effective beginning January 1, 1996. Is the round robin process proceeding on time, so the final benzene test tolerance will be in place by January 1, 1996?

**Answer:** The benzene test tolerance round robin program that is described in the Preamble to the RFG Final Rule has not proceeded according to the schedule described there. See, 59 FR 7764 (February 16, 1994). The difficulty has been in identifying the precise nature of the benzene test under the Final Rule. Section 80.46(e) specifies that the benzene test method is ASTM method D-3606-92, but this section also states that "[i]nstrument parameters must be adjusted to ensure complete resolution of the benzene, ethanol and methanol peaks because ethanol and methanol may cause interference with ASTM standard method D-3603-92 when present." The best set of modifications currently known to EPA were recently announced. See, Test Methods Question 1 from the November 21, 1994 Question and Answer Document. EPA now believes the benzene round robin process may begin in the near future, because the benzene test method issue has been resolved. Nevertheless, it will not be possible to conclude the benzene round robin process within the time discussed in the Preamble to the RFG Final Rule.

Therefore, EPA has decided to extend applicability of the initial benzene enforcement test tolerance (0.21 vol%) beyond January, 1996, until six months after the date upon which EPA announces a new test tolerance to be based upon the outcome of the pending EPA/API round robin test program.<sup>(12/5/94)</sup>