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**ENFORCEMENT OF VOLATILITY
REGULATIONS:
QUESTIONS AND ANSWERS**

Field Operations and Support Division
Office of Mobile Sources
U.S. Environmental Protection Agency

PREFACE

This edition of the Enforcement of Volatility Regulations -- Questions and Answers responds to questions we received concerning the manner in which the United States Environmental Protection Agency intends to implement and enforce the gasoline volatility regulations at 40 CFR §§ 80.27 - 28. It was prepared by the Field Operations and Support Division of the Office of Mobile Sources, United States Environmental Protection Agency, and supersedes the 1992 edition of this document. Answers that have been revised from the 1992 edition are indicated by an asterisk (*). New questions and answers are indicated by a double asterisk (**). Questions and answers that no longer apply due to statutory, regulatory or policy changes have been deleted.

Regulated parties may use this document to aid in achieving compliance with the volatility regulations. However, it does not, in any way, alter the requirements of the volatility regulations.

We will attempt to respond in writing to any additional questions on this subject. Please send any such questions in writing to Director, Field Operations and Support Division (6406J), United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

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Washington, D.C.
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A. LEAD TIME ISSUES

1. **Question:** Can a refiner ship or a pipeline transport higher RVP fuel in the summer to be used in the winter?

Answer: The regulations prohibit the sale, supply, offering for sale or supply, dispensing or transport of gasoline whose volatility exceeds the applicable standard. "Applicable standard" is defined in the regulations as the standard for the geographical area and time period in which the gasoline is intended to be dispensed to motor vehicles.

The issue of what is the applicable standard will only arise when gasoline is moving through the distribution system. Once gasoline is delivered to a service station or fleet dispensing facility, the applicable standard will be the RVP standard for the area in which the facility that is selling, offering for sale, or dispensing gasoline during the control period is located. For gasoline in other parts of the distribution network, the Agency anticipates that refiners, importers, distributors, ethanol blenders, resellers, and carriers will clearly designate the volatility class of gasoline and the location in which it is intended to be dispensed to vehicles during the control period. Where this is not done and this information cannot be determined, the Agency generally will assume that the applicable standard is the standard for the area in which the facility is located.

Therefore, gasoline that is not intended to be dispensed to motor vehicles until after the close of the volatility control period on September 15 may be lawfully shipped prior to that date. However, the burden will be on the parties involved in the sale and distribution of such product to demonstrate that it will in fact be dispensed at a later date and to assure that it is not dispensed during the control period. Particularly at a facility directly supplying retail and fleet facilities (e.g., a terminal or bulk plant), product intended for later use would have to be kept carefully segregated from low volatility product being shipped to such facilities, until after September 15. Should such high RVP fuel actually end up at a retail station or fleet facility prior to the close of the control period, this will constitute a violation of the regulations for which responsible parties will be liable. The Agency encourages additional oversight testing when "winter" gasoline is in the system.

In order to determine if particular product is intended for dispensing after the control period, the Agency will generally rely on certifications or disclaimers contained in documents accompanying the product which clearly state the intended use of

the product, as well as any other evidence showing the status or intended use of the product.

2. Question: What should a retailer do if, due to low turnover, he still has noncomplying gasoline in his tanks when he receives complying gasoline from the distributor at the beginning of the compliance period? If he has a large tankful, does he have to hold it all summer? May a terminal close and seal off tankage that does not meet specifications?

Answer: The regulations provide a two-date system for the start of the volatility control period, May 1 for upstream parties and June 1 for retail outlets and wholesale purchaser consumers. Retail stations should begin receiving lower RVP fuel from their distributors even before the effective date of the distributor's compliance period (as the distributor brings his facility into compliance) and by such date, at the latest, the retailer should begin receiving product that fully meets the applicable RVP standard.

In the case of a terminal that has product exceeding the applicable RVP standard at the beginning of the compliance period, the regulations require that this product not be sold, supplied, offered for sale or supply, dispensed, or transported. The alternatives available are: a) store and seal the product until a time period when the product can be distributed, provided it is clearly designated as product not intended to be sold, supplied, offered for sale or supply, dispensed, or transported; b) transport the product to a geographic area where the product can be used, provided that such transportation is only for the purpose of correcting the high RVP; c) blend lower volatility product with the higher RVP product to bring its volatility within the standard.

***3. Question:** Can an upstream facility located in a 7.8 psi standard area that supplies gasoline to 7.8 psi standard areas store and dispense 9.0 psi RVP gasoline during the month of May, without violating the volatility regulations?

Answer: The volatility regulations set the RVP standard for all facilities in all areas at 9.0 psi for the month of May, even those areas that have a 7.8 psi standard from June 1 to September 15. Therefore, any facility may store or distribute gasoline whose RVP is 9.0 psi or below during the month of May. However, upstream facilities located in 7.8 psi areas that are supplying 7.8 psi areas, must have for distribution gasoline that is in compliance with the 7.8 psi standard on June 1. Moreover, upstream facilities supplying gasoline to 7.8 psi standard areas must take steps to ensure that gasoline moving through the

distribution chain prior to June 1, is in compliance with the 7.8 psi standard if the gasoline is to be dispensed to motor vehicles in a 7.8 psi standard area on or after June 1. If an upstream facility that supplies 7.8 psi areas also supplies 9.0 psi standard areas, it may have for distribution gasoline that is 9.0 psi, provided that it takes reasonable steps to ensure that the 9.0 psi gasoline will be shipped to the proper area. See Section B, question 5, for further discussion of this situation.

**B. ESTABLISHING THE CLASSIFICATION OF PRODUCT AND
APPLICABLE RVP STANDARD**

1. Question: What changes in gasoline RVP requirements have been made or are anticipated as a result of section 211(h) of the Clean Air Act Amendments of 1990?

Answer: Section 211(h) (1) of the Clean Air Act Amendments of 1990 provides that EPA shall promulgate regulations making it unlawful for any person during the high ozone season to sell, offer for sale, dispense, supply, offer for supply transport, or introduce into commerce gasoline with an RVP in excess of 9.0 psi. Section 211(h) (2) of the Act provides that EPA may not impose an RVP standard lower than 9.0 psi in any area that has been designated as an ozone attainment area, with the exception of former ozone nonattainment areas that have been redesignated as attainment areas.

In the Phase II volatility rulemaking published on June 11, 1990, EPA had designated statewide RVP standards to be implemented in 1992 and beyond. Although no state standard was set above 9.0 psi, several states, primarily in the South and Southwest, were designated to have a statewide standard of 7.8 psi. Because the Clean Air Act Amendments of 1990 prohibit a standard below 9.0 psi for ozone attainment areas, EPA amended the volatility regulations in a rulemaking published on December 12, 1991 (56 FR 64704), to provide that the 7.8 psi standard shall apply only to ozone nonattainment areas located in those states designated as 7.8 psi states in the Phase II rulemaking. Nonattainment areas located in states designated as 9.0 psi states in the Phase II rulemaking have a 9.0 psi standard.

2. Question: How will an upstream facility establish at the time of inspection that a product is intended to be blendstock rather than finished product?

Answer: With regard to product being shipped out of the refinery, in the absence of evidence to the contrary, if a product's characteristics are such that the product meets the regulatory definition of gasoline ("any fuel sold in any State for use in motor vehicles and motor vehicle engines, and commonly or commercially known or sold as gasoline") EPA will treat it as finished gasoline subject to the volatility regulations. However, as a matter of enforcement policy, EPA will not hold a party liable for product that arguably meets the regulatory definition of gasoline if: a) the product is clearly labeled as blendstock and documentation supports this classification; b) the label clearly states that the product may not comply with federal RVP standards; c) some aspect of the product's quality other than RVP supports the party's claim that it intended the product to be

further blended before being sold, supplied, etc., as finished product (e.g., the octane is higher or lower than product typically sold as regular or premium grade gasoline); d) the party has obtained a written certification from the buyer/recipient of the product that he understands that the product may be nonconforming and that he will not sell or supply the product as finished gasoline unless or until it is blended to meet federal RVP standards, or he receives the equivalent certification from a subsequent buyer; and e) the party has no knowledge or reason to believe that the product will not be further blended to comply with the applicable RVP standard before being sold, supplied, or transported as finished product.

3. Question: How will an upstream facility establish at the time of inspection that a product is intended for storage or export rather than for sale?

Answer: EPA will assume that all gasoline found in the United States is intended for domestic sale and thus is subject to the RVP standards unless the product is clearly documented to be for export only and the evidence (e.g., normal commercial documents) supports this classification. The label should further clearly state that the product may not comply with federal RVP standards. Similarly, regarding product in storage at a refinery or importer facility, EPA will not hold a party liable for product that does not comply with the applicable standard if the evidence shows that the product is being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. The Agency will generally rely on certifications or disclaimers contained in documents accompanying the product which clearly state the intended use of the product, as well as any other evidence showing the status or intended use of the product.

****4. Question:** Assuming a carrier has an oversight program in place, and a random sample is tested high for RVP, the gasoline may still be in the carrier's system. Can the carrier reclassify the finished product as blendstock, with proper documentation, in order to deliver the gasoline out of its system? Also, if the carrier contaminates the gasoline with a butane stream, for example, can the product be downgraded to a blendstock?

Answer: If, in the situations described above, the carrier clearly identifies the product as product having high RVP which is not to be sold until and unless it is reblended to meet applicable RVP standards, and the product is routed directly to a reblending facility, EPA generally will consider the product to be blendstock rather than finished gasoline being offered for sale. If, however, such product, in fact, is routed to a retail

outlet, EPA may find the carrier liable for the violation if the carrier failed to take adequate measures to ensure that the high RVP gasoline would be taken out of the distribution system and reblended.

***5. Question:** How can a party establish the place the gasoline is to be sold for purposes of determining the applicable RVP standard? If a party located in a 7.8 psi area maintains inventories of both 7.8 psi gasoline and 9.0 psi gasoline (for distribution to locations in both areas), what documentation pertaining to gasoline volatility is the party required to maintain? What documentation is required by a pipeline located in a 7.8 psi area which sells only 9.0 psi gasoline designated for 9.0 psi areas? Are there any requirements on terminal signs, bills of lading, or other documents that will be required to assure customers and EPA that the correct RVP gasoline is being distributed to the proper locations? Would letters to distributors notifying them of the availability of two RVP grades of gasoline suffice? Must the loading arms at a terminal truckloading rack be marked to indicate RVP? Where no indication exists regarding intended destination, how will EPA determine the applicable RVP standard?

Answer: The volatility regulations do not require parties to maintain specific documentation pertaining to gasoline volatility. However, if EPA tests gasoline at a facility located in or near a 7.8 psi area to be between 7.8 and 9.0 psi, it will ask the facility to look at documents of sale, such as bills of lading or receipts, for evidence of the destination at which the gasoline is intended to be dispensed to motor vehicles and/or where the gasoline is being shipped.

If, in the normal course of his business, the party does not have information regarding the actual destination of the gasoline, it should clearly indicate on the documents of sale that the gasoline contains 9.0 psi gasoline, not intended for sale in 7.8 psi designated areas. The party should also inform its customers at the beginning of the season that it will be supplying 9.0 psi gasoline which should not be delivered to areas requiring 7.8 psi gasoline. In addition, at terminals, the gasoline should be labeled for RVP at the rack. In the absence of any indication concerning intended destination, EPA will assume that a party located in or near a 7.8 psi area will be supplying outlets in 7.8 psi areas and will apply that standard.

In many cases, the trucker/distributor indicates the actual destination (usually the retail facility name and address) on the bill of lading before or after loading and leaves a copy at the terminal. In this situation, the terminal should periodically review the documents of sale for indications of misdeliveries.

If misdelliveries are detected, the terminal should notify the distributor and take appropriate action to ensure compliance, including, if necessary, a refusal to supply a distributor or carrier who continues to misdelliver gasoline.

In addition to documents of sale, EPA may ask for a list of the party's distributors for possible follow-up inspections. If a violation is found downstream and a party such as a terminal is presumed liable for the violation, as a defense, the party may provide evidence that it took the steps indicated above to ensure delivery to the proper area. If the party has not taken these steps, or, if the sales documents indicate misdelliveries, the party will find it difficult to defend against the presumption of liability.

6. Question: Given that a refinery does not offer gasoline for sale at its location and ships on a pipeline to a proprietary terminal some distance away, will the refinery be required to meet the RVP standard in its tanks or can the proprietary terminal act as a remote blending location and final point of sale for EPA RVP monitoring purposes.

Answer: A refiner must meet the applicable RVP standard in its tanks if the gasoline is sold as finished gasoline. As indicated above, however, a refiner may sell gasoline as blendstock intended to be further blended before sale as finished product. In such case, the refiner must fulfill the criteria outlined in the answer to Question 2 above.

***7. Question:** What type of labeling of products will be required? Must a party physically label tanks, or will it be sufficient that records clearly indicate the RVP level and whether the gasoline is intended for export, storage or to be used as blendstock?

Answer: The regulations do not require that labels be physically affixed to tanks of gasoline. Commercial documents indicating the RVP level and whether the gasoline is intended for export, storage or to be used as blendstock may be sufficient. However, a party may wish to label its tanks to further protect itself. Terminals located in or near a 7.8 psi standard area, are advised to label the gasoline at the rack. (See Question 5 above.)

8. Question: If product type at a retail facility is in the process of being changed to an alcohol blend, the product coming from the pump nozzle may not initially satisfy the alcohol content requirement at 40 CFR § 80.27(d)(2). Will the retail

facility still be eligible for the special provision for alcohol blends at 40 CFR § 80.27(d)(1) of the regulations?

Answer: In order to be eligible for the special provision at 40 CFR § 80.27(d)(1), which provides for an additional one pound per square inch allowance, the product coming from the pump nozzle must satisfy the alcohol content requirement. This would apply when product type is being changed at a retail outlet.

9. Question: Must the label required at 40 CFR § 80.27(d)(3)(i) state the precise percentage concentration of ethanol?

Answer: The pump labeling requirement for ethanol blends was deleted from the volatility regulations by the final rulemaking published on December 12, 1991.

***10. Question:** Did the Clean Air Act Amendments of 1990 require changes to the one pound RVP allowance for ethanol blends permitted in the volatility regulations?

Answer: Yes. In accordance with the Clean Air Act Amendments of 1990, EPA published a final rule on December 12, 1991, which provides that, to qualify for the one psi allowance, gasoline must contain denatured, anhydrous ethanol. The concentration of ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. See 40 C.F.R. § 80.27(d)(2).

11. Question: Are gasoline volatility rules regarding the RVP of gasoline ethanol blends similar in 7.8 psi and 9.0 psi standard areas?

Answer: The volatility rules at 40 C.F.R. § 80.27(d) regarding the one psi allowance for ethanol blends applies to qualifying gasoline in both 7.8 psi and 9.0 psi standard areas.

***12. Question:** Some vehicle and engine manufacturers blend test fuels for the purpose of testing vehicles on a wide range of fuel volatility. If the volatility of the blended fuel exceeds the standard, what provisions will EPA extend for such testing? Would the Agency relax the volatility requirements for the production, storage, shipping and use of test fuels with high RVPs in amounts less than ten thousand gallons?

Answer: On March 17, 1993, EPA published a final rule which provides an exemption from the volatility regulations for gasoline used for research or emissions certification. The

requirements for obtaining this "testing exemption" are contained in § 80.27(e) of the regulations. Basically, the testing exemption requires the applicant to demonstrate that the proposed test program: 1) has an appropriate purpose; 2) necessitates the granting of an exemption; 3) is reasonable in scope; and 4) exhibits a degree of control consistent with the purpose of the program and the EPA's monitoring requirements, which are outlined in the regulations.

****13. Question:** Must a party obtain a testing exemption for high RVP fuel to be used in vehicles not operated on the road or in motor vehicle engines?

Answer: A party should obtain a testing exemption for any high RVP gasoline that is sold, offered for sale, dispensed, supplied, offered for supply, or transported during the volatility control period that qualifies for an exemption.

****14. Question:** What detail is required regarding the test results obtained under a testing exemption?

Answer: The amount of detail required will depend on a number of factors, such as the nature of the testing, the reason for the testing, and what results are obtained from the testing. See 40 C.F.R. 80.27(e) for further discussion of these requirements.

15. Question: Are territories and possessions like Puerto Rico covered under the regulations?

Answer: Only gasoline intended to be dispensed in the 48 states in the continental U.S. is subject to the regulations. Product shipped to such states from places like Puerto Rico (or Alaska or Hawaii) will be treated like imported gasoline.

C. CLASSIFICATION OF REGULATED PARTIES

1. Question: What is the classification of a party who receives and stores, but does not own the gasoline? What if he blends the gasoline at the owner's discretion?

Answer: Under the regulations, "distributor" means any person who transports or stores or causes the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility. Thus, ownership is not necessary to render a party a distributor under the regulations. A distributor who transports or stores or causes the transportation or storage of gasoline without taking title to or otherwise having any ownership of the gasoline and without altering either the quality or quantity of the gasoline is a "carrier" under the regulations. Any person who blends gasoline, however, is classified as a refiner and is subject to refiner liability and defenses. A person who adds ethanol to gasoline (and meets the other elements of the definition) is classified as an ethanol blender and is subject to ethanol blender liability and defenses.

2. Question: Will a trader who buys and sells gasoline only in "back-to-back" transactions, thereby taking legal title but not more than instantaneous physical custody of such products, be considered a "distributor" under 40 CFR § 80.2?

Answer: Yes, the regulations provide for distributor liability on the part of any person who transports or stores or causes the transportation or storage of gasoline at "any point" between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility. A party who takes legal title to the product transports or stores or causes the transportation or storage of the gasoline during the time it is in that party's custody and, thus, is covered as a distributor under the regulations.

3. Question: Will a blender of gasoline be considered a "refiner" under 40 CFR § 80.2?

Answer: Yes. However, if the party meets the definition of an ethanol blender, he will be subject to ethanol blender liability and defenses rather than refiner liability and defenses.

4. Question: Assume that an ethanol blender uses raffinate as a fuel component. In the event of an RVP violation detected

downstream, must the blender meet the defense requirements of a refiner or of an ethanol blender as described in 40 CFR § 80.28(g)?

Answer: The Agency interprets the definition of "ethanol blender" strictly as any person operating a refinery at which gasoline is produced solely through the addition of ethanol to gasoline, and at which the quality or quantity of gasoline is not altered in any other manner. A blender that uses raffinate as a fuel component thus could not be classified as an "ethanol blender," but rather would be classified as a "refiner" and would be required to meet the defense requirements of a refiner in the event a violation is detected downstream.

5. Question: Often, fuel terminals offering ethanol and gasoline for blending are automated or otherwise unsupervised, allowing a truck driver to create a load of blended fuel without direct supervision from the component supplier. The fuel is either blended in line while feeding the truck or actually splash blended in the truck. Accordingly, in the latter circumstance, are there two ethanol blenders, one the terminal operator responsible for testing the RVP of the component gasoline, and the second being the truck operator creating the newly blended fuel and responsible for testing the RVP thereof?

Answer: This hypothetical describes three potentially responsible parties. Where ethanol and gasoline are "splash" blended in a truck operated by a common carrier, usually there are two "ethanol blenders" subject to the volatility regulations: the common carrier company and the company that hired the common carrier. The regulations define an "ethanol blender" as any person who owns, leases, operates, controls, or supervises an ethanol blending plant. In the situation described, EPA would consider the truck as the ethanol blending plant. The company that owned and/or operated the truck would thus meet the definition of "ethanol blender," and in the event of a violation would be responsible for meeting the defense for an "ethanol blender" found at 40 CFR § 80.28(g)(6) of the regulations.

The company that hired the truck in most situations would meet the definitions both of "ethanol blender" and "distributor," 40 CFR § 80.2(l), for "caus[ing] the transportation or storage of gasoline at any point between any gasoline refinery or importer's facility and any retail outlet or wholesale purchaser-consumer's facility," and in the event of a violation would be required to meet the defenses at 40 CFR §§ 80.28(g)(3) and (g)(6).

Under the regulations, where a violation is detected at an ethanol blending plant, the distributor, carrier, and refiner or importer of the gasoline which was blended with ethanol are

deemed to be in violation, in addition to the ethanol blender. 40 CFR § 80.28(d)(1). The company that operated the terminal and provided the component gasoline would meet the definition of a gasoline distributor and in the event of a violation would be liable unless it is able to establish the defense for distributors found at 40 CFR § 80.28(g)(3).

D. LIABILITY OF REGULATED PARTIES

1. Question: Where one refiner supplies gasoline to its branded retail outlet which was obtained in exchange from a terminal operated by another refiner, and a violation is detected at the retail outlet, who is liable?

Answer: The regulations provide for presumptive liability on the part of both parties to the exchange, one party as the "branded" refiner and the other as a distributor.

2. Question: For violations found at branded or unbranded distributor facilities, will EPA seek to hold liable only the distributor in custody of the product at the time of the violation or will all distributors in the prior chain of title be considered vicariously liable?

Answer: All distributors will be presumed liable.

3. Question: For violations found at branded or unbranded retail outlets or wholesale-purchaser consumer facilities, will EPA hold liable all distributors in the prior chain of title to that product?

Answer: Yes.

4. Question: As to mere storage of gasoline at refineries or import terminals, does EPA's enforcement policy exemption apply to only the actual importer or refiner of such product, or to any person who owns or took title to such product while it remained in storage at the import or refinery terminal?

Answer: The policy regarding gasoline in storage will apply to any person who owns or takes title to the gasoline so long as the person can show that the product is in fact being stored and is not being sold, offered for sale, supplied, offered for supply, transported or dispensed. If the product is moved out of storage and put into the chain of distribution, the owner of the product is subject to liability for nonconforming gasoline as set forth in the regulations.

5. Question: If a refiner ships product to its own terminal via a fungible pipeline and can show that only product with correct volatility was put into the pipeline by the refiner, but that product having high volatility is discovered at the terminal, is the refiner liable? If the refiner removes the high volatility product from distribution, how can the refiner show that it has

done so?

Answer: In order to establish a defense in this situation, the refiner would have to satisfy the elements of the refiner's defense at 40 CFR § 80.28(g)(4).

The refiner can establish it has removed the high volatility product from distribution by placing disclaimers or certifications on the paperwork relating to this product which clearly state the product is not in distribution or that it is to be distributed to an area where it will be in compliance. If the product is further distributed as non-complying fuel, this will constitute a violation.

6. Question: In a situation where a violation is detected at a branded retail outlet which is supplied from a branded distributor which, in turn, receives gasoline through a pipeline which transports the commingled production of the refiner whose brand appears, plus one or more other refiners, are all the refiners liable? How could the refiners establish a defense?

Answer: The refiner whose brand name appears at the retail outlet would be liable. In order to establish a defense, it would have to show each of the elements of the branded refiner defense in 40 CFR § 80.28(g)(4). The other refiner(s) whose commingled product was delivered to the retail outlet may be liable if they meet the definition of another regulated party (e.g., distributor).

7. Question: If a violation is found at a terminal and the terminal operator does not own the gasoline, who would be liable?

Answer: The owner or operator of a terminal which stores gasoline without taking title to or otherwise owning the gasoline and without altering either the quality or the quantity of the gasoline, is defined by the regulations as a "carrier" (see 40 CFR § 80.2(t)). As a carrier, this party would be presumed liable because the gasoline having high volatility was found at that carrier's facility. In addition, the refiner, importer, or ethanol blender who produced or imported the gasoline would be presumed liable.

8. Question: What should a carrier do if it would be in breach of a contract with the company supplying the product by refusing to transport or store product having excessive volatility?

Answer: Where gasoline having excessive volatility is found at a carrier facility (including a terminal which does not take title to the product), the carrier is presumed liable for

violating the regulations. We believe carriers can, and should, negotiate contracts which are drafted in such a way that the carrier is not obligated to transport or store product in violation of the regulations.

9. Question: In a case where more than one party is presumed liable for a violation, and more than one of the parties is unable to establish a defense, is each party liable for a separate penalty?

Answer: Each party who is liable for a violation, and who is unable to establish a defense, is liable for a separate penalty.

***10. Question:** If a finished product tank at a refinery is analyzed by the refiner using the test method in Appendix E (or another test method where adequate correlation to the method in Appendix E is demonstrated) and is found to be 0.2 psi below the applicable RVP standard and is released for sale, and a day later the tank is retested by the refiner and found to be 0.1 psi over the applicable RVP standard, is the refinery out of compliance?

Answer: If, as in this scenario, the average of the refiner's test results is at or below the standard, it is unlikely that EPA would find the product in violation based on EPA's testing of a sample of the product taken at the facility during an inspection. If, however, upon testing, EPA finds the gasoline to be in violation, it may bring an enforcement action. If a violation is found downstream from the refinery, the refiner can fulfill the test element of its defense by showing that the average of its test results was at or below the standard.

11. Question: Which party in the distribution system is liable (must make a defense) if a sale of 9.0 psi gasoline is made in a 7.8 psi standard area? Is liability different for: 1) company-owned retail stations selling exchange gasoline, 2) branded jobber retail stations selling exchange gasoline, 3) branded jobber retail stations selling spot gasoline.

Answer: If 9.0 psi gasoline is sold by a retail outlet in an area having a 7.8 psi standard, all parties in the distribution chain will be presumed liable, as they would for any RVP violation, in accordance with the liability provisions of 40 CFR § 80.28. Liability attaches to any retail outlet selling gasoline that is out of compliance.

12. Question: For a terminal supplying both levels of RVP-

controlled gasoline (7.8 psi and 9.0 psi) with the intent of satisfying both markets appropriately, what liability, if any, is incurred if a distributor knowingly buys 9.0 psi gasoline and supplies it to a 7.8 psi area retail station?

Answer: If a distributor supplies 9.0 psi gasoline to a retail outlet in a 7.8 psi area, the terminal will likely be presumed liable for the violation. However, the terminal may rebut the presumption of liability by meeting the elements of its defense, which would include a showing that it took the steps indicated in Section B, Question 5 above, to ensure that the gasoline would not be sold in a 7.8 psi area.

***13. Question:** To what extent will a gasoline refiner be liable for the blending of ethanol gasoline (in meeting the ethanol concentration requirement) by a terminal which sells to (1) branded retail outlets (2) unbranded retail outlets?

Answer: In this scenario, the terminal would be the ethanol blender subject to the defenses contained in 40 CFR §80.28(g)(6). If the terminal sells the ethanol blend to a retail outlet displaying the refiner's brand name, the branded refiner would be presumptively liable for violations. Where the terminal sells the product to an unbranded retail outlet, under the regulations as originally promulgated, the refiner would not have been presumed liable. The final rule published on March 17, 1993, however, modified the rule to provide that the refiner at whose refinery the gasoline was produced may be deemed liable for violations found at an unbranded retail outlet. (58 Fed. Reg. 14485). Distributors of the gasoline may also be deemed liable for the violation. In the case of an ethanol blend violation, however, parties presumed liable may be able to meet the causation element of their defense by showing that the violation was caused by the ethanol blender's failure to blend the gasoline with the proper concentration of ethanol.

14. Question: Many petroleum distribution facilities (terminals) are automated. Therefore, the owner/operator does not personally dispense product into a transportation vehicle. Rather, the driver loads those products or mixtures (e.g., ethanol blends) desired by the retail customer. On occasion, a driver, not an employee/agent of the owner/operator, will arrive at the terminal with a non-complying material already in the transportation vehicle. To this material, he/she will add complying product and ethanol in a quantity sufficient to make the entire load 10% by volume. The amount of ethanol added to the vehicle may actually be more than 10% by volume of what was loaded from the terminal. Under this scenario, should the carrier and/or retailer be found to have supplied a product that

did not meet RVP compliance standards, it appears that they and the distribution facility (and perhaps others), would be held presumptively liable. Do the regulations provide the terminal owner/operator with the opportunity to remove itself from the presumption of liability by the mere showing that it did not participate in the blending? Must the owner/operator provide only as much ethanol as may be necessary to meet the 10% ethanol by volume requirement for the product loaded at the terminal?

Answer: If the truck driver dispenses ethanol and gasoline into the truck compartment in amounts determined by the driver, the trucker would be liable as the ethanol blender. Consequently, it would be the trucker's responsibility to meet the 10% ethanol by volume requirements of the product loaded at the terminal rather than the terminal. If the product is premixed and sold as a 10% ethanol product, the terminal would be liable as the ethanol blender. If a violation is found downstream from the trucker, and it is determined that the trucker is the ethanol blender, the terminal may still be presumed liable as a distributor, particularly if the violation involves a high RVP level, rather than an improper amount of ethanol.

E. DEFENSES

1. Question: What kind of documentation or other evidence must a party provide to establish that it (or his employees or agents) did not cause a violation?

Answer: All factors cannot be listed because factual circumstances differ and because EPA cannot anticipate all the types of evidence that may show non-causation. For all parties, however, in meeting the non-causation portion of their defense, the regulations provide that the party must show, by reasonably specific showings, by direct or circumstantial evidence, that the party (or the party's employee or agent) did not cause the violation. In many instances the cause of the violation will be evident from the inspection results and related documentation.

In the case of a refiner or importer, providing results of the sampling and testing of the gasoline in question before it left the refinery or importer's facility would be a strong factor in determining whether the refiner or importer caused the violation. However, because the refiner or importer could have caused the violation despite acceptable test results, additional evidence may be required. For example, a refiner could ship to its own downstream terminal two products with different volatilities intended for different volatility standard areas. If these products become commingled after leaving the refinery, the product intended for the lower volatility area could be in non-compliance. The refiner thus could have "caused" this violation even though the product was in compliance when it left the refinery.

For distributors, resellers, ethanol blenders and carriers, the best evidence to show they did not cause the violation is evidence of who caused the violation and how. Other strong evidence would be test results showing the particular gasoline in question met the standards when it was delivered from these parties to the next person in the distribution chain. Evidence consisting of the other defense elements (e.g., receipt of product which was in compliance, an oversight program with periodic test results, and evidence of blending no more than 10% ethanol in the case of ethanol blenders) would assist in showing the violation must have been caused by another, but this is not necessarily conclusive. Where no cause can be established for a violation, and no person in the distribution chain will accept responsibility, the showing necessary for each person in the chain to establish it did not cause the violation will be more difficult.

It is not sufficient for a distributor to show that it did not handle the gasoline, because there are ways to cause a

violation without actually touching the gasoline (e.g., by misrouting 9.0 psi RVP gasoline to a 7.8 psi RVP area). Moreover, other elements of the defense still must be met.

In the case of a retailer, the following types of evidence are examples of relevant factors relating to whether the retailer caused a violation:

- 1) records evidencing whether or not all gasoline purchased by the retailer complied with the applicable standard;
- 2) any evidence regarding whether the retailer knew or had reason to believe that the gasoline did not meet the standard;
- 3) any evidence regarding alteration of gasoline stored in his tanks by the retailer;
- 4) turnover rate; and
- 5) any evidence that the retailer may have received gasoline from an unidentified supplier(s).

2. Question: What criteria will EPA use to evaluate oversight programs; is sampling and testing required, and if so how much? What type of service station monitoring is considered acceptable? Is there a minimum percentage of shipments which must be tested? What constitutes an acceptable oversight program for a gasoline refiner supplying (1) branded jobbers selling under that refiner's brand, (2) another independent or unbranded jobber? As part of its oversight program, must a branded refiner perform periodic sampling and testing at their non-owned terminals which supply the branded refiner's dealers pursuant to an exchange agreement, where the non-owned terminals carry out their own periodic sampling and testing program? Is a retail sampling program required for an adequate defense against an incident of noncompliance at a branded retail outlet? If so, what is an adequate retail sampling program? Please detail oversight responsibilities for jobbers.

Answer: For a distributor, reseller, ethanol blender, or carrier (when the violation is found at the carrier facility) to establish a defense, these parties must show (in addition to other elements) an oversight program such as periodic sampling and testing to monitor the product being sold, supplied, or transported by that party. This program would thus monitor the quality of product in the possession or ownership of the party, and not of product which has passed downstream. The volatility regulations do not require that an oversight program consist of sampling and testing, but EPA is not aware of an effective oversight program which would not include some periodic sampling

and testing.

The frequency of periodic testing which would satisfy this requirement will depend upon several factors, including the following: a) the results of previous sampling; b) the volume of product in a particular batch (the larger the volume, the greater the justification for sampling and testing that batch); c) the degree of confidence in the quality of the product which was received; d) the opportunity for increased volatility while the product is in the possession of the party (e.g., higher volatility product present which could be commingled); and e) the opportunity to deliver product to an area requiring a lower volatility.

In the case of refiners, two types of sampling and testing are required (in addition to other requirements) in order to establish a defense where a violation is found downstream and they are presumed liable. The refiner is required to show through sampling and testing that the gasoline determined to be in violation was in compliance with the applicable standard when transported from the refinery. This generally would require that all product be tested. In addition, when the violation is found at a branded facility downstream, the refiner also must show a quality assurance program at its downstream branded facilities, such program to include periodic sampling and testing. The frequency of periodic sampling and testing which would satisfy this requirement will depend upon factors such as the following: a) the volume of product being handled at a particular facility; b) the opportunity for violations to occur (e.g., the presence of higher volatility product which could cause a violation through commingling); c) the results of previous sampling at that facility and at facilities upstream and downstream from the facility found in violation; d) if there is reason to believe relevant facilities do not comply with the contractually imposed requirements designed to prevent violations; and e) the results of sampling and testing in the market area where the violation occurred. A branded refiner may use other parties to conduct periodic sampling and testing downstream. However, if the branded refiner is to meet the oversight portion of its defense, it cannot simply rely on another party's oversight; the refiner must have an appropriate contract with the party and maintain oversight with regard to that party's program. If the other party's sampling or testing is inadequate the branded refiner will not be able to meet its defense.

3. Question: What specific criteria are required for a gasoline refiner to establish a defense in case of a violation? If RVP levels were to exceed EPA standards, what enforcement consideration would EPA extend to refiners who acted in good faith and can produce source records demonstrating that original

testing information indicated compliance?

Answer: The elements required for a refiner to establish a defense to a violation detected at a downstream facility are contained in 40 CFR § 80.28 (g)(2) (for violations found at unbranded distributor or ethanol blender facilities, carrier facilities, retail outlets or wholesale purchaser consumers) and 40 CFR § 80.28(g)(4) (for violations found at branded distributor, ethanol blender, retail, or wholesale purchaser-consumer facilities). In any case where a refiner is presumed liable for a violation found at a downstream facility, one element required of the refiner to make its defense is test data indicating that the gasoline was in compliance when it was delivered to the next party in the distribution system or when transported from the refinery (depending on the type of downstream facility).

4. Question: What documentation would be necessary (e.g., transfer and receipt records, testing, and sales documents) to satisfy EPA that gasoline was, in fact, 7.8 psi maximum when sold out of a terminal which carries both 7.8 and 9.0 RVP gasolines. Are tests at transfer to terminal storage adequate or would EPA demand testing daily or at each loading rack?

Answer: The regulations do not require a terminal to test the gasoline daily or at each loading rack; rather, the regulations require an oversight program, which normally will include periodic sampling and testing. However, the more evidence the terminal can provide showing that the gasoline met the standard when it left the terminal (shipping and sales documents, test results of the gasoline in question, etc.), the easier it will be for the terminal to establish the non-causation part of its defense.

5. Question: What constitutes an acceptable RVP oversight program where ethanol is blended into trucks? Since the fuel in the truck may be stratified immediately after "blending" can the truck blender satisfy the oversight portion of its defense by hand-blending samples of base products with ethanol, duplicating the truck ratios of gasoline to ethanol?

Answer: The basic requirements for ethanol blender oversight programs for RVP are referred to in the answer to Question 2, above. In the case of truck blenders, sampling and testing from locations in addition to the trucks may be useful or necessary. For example, samples could be taken after the product is dropped, if it is dropped into a relatively empty storage tank, or samples could be taken directly from truck compartments. However, because of the possibility that product carried in the

different truck compartments is not homogeneous (this is particularly true in the case of truck splash blending), the oversight program needs to include periodic sampling and testing of product carried in each of the truck's compartments separately, and not only of the truck as a whole.

Hand-blending a small amount of gasoline product with ethanol and then testing may be one facet of such an oversight program, but we doubt whether it would be reliable enough to substitute for taking representative samples of finished blended product from storage tanks.

6. Question: What constitutes an acceptable oversight program for pipeline and motor carriers; is testing required?

Answer: Both pipeline carriers and motor carriers are presumptively liable for violations detected at their facilities. To rebut this presumption, both types of carriers have to demonstrate (in addition to the other defense elements) an oversight program concerning the product which is carried. Such an oversight program does not necessitate testing each load or batch of gasoline but envisions a program such as periodic sampling and testing. The frequency of testing would depend on factors such as the size of the loads or batches, and larger loads or batches would justify more frequent testing. The oversight requirement applies to commingled product, as well as product received from a single source.

In particular, motor carriers could have a valid oversight program without actually testing the product themselves. For example, they could arrange with the owner of the product to do periodic testing of the gasoline immediately before or after delivery and could use these test results as a basis for oversight. Such an alternative oversight program may be particularly appropriate for a carrier who delivers product that does not pass through a facility owned or operated by him.

Pipeline carriers, on the other hand, normally transport batches of gasoline through their own facilities which are very large, so that testing of every batch by the pipeline operator may be necessary. Factors relative to the appropriate frequency of sampling for a pipeline include the following: a) the results of previous sampling (the discovery of gasoline having excessive volatility would necessitate increased sampling frequency); b) the volume of product being moved (the larger the volume of a batch, the greater the justification for sampling and testing that batch); c) the degree of confidence the pipeline has in the representations made by the company providing gasoline to the pipeline; and d) the opportunity for increased volatility due to commingling with higher volatility product in the pipeline.

7. Question: Where a pipeline company makes direct shipments to terminals (with no intermediate tankage or commingling of products), is redundant testing of shipments by the pipeline required for adequate defense, given that multiple testing of all shipments has been performed by the refinery?

Answer: As indicated above, the regulations do not require carriers, including pipelines, to test each shipment of gasoline to make a defense; rather carriers are required to have an oversight program, which normally will include periodic sampling and testing. However, in the case of a pipeline, testing each batch of gasoline may be necessary to ensure that the gasoline meets the applicable standard. The amount of testing may be influenced by the amount of confidence the pipeline has in the company supplying the gasoline.

8. Question: What must a refiner do to meet the "contract defense," as set forth in 40 CFR § 80.28(g)(4)?

Answer: The defenses set forth in 40 CFR § 80.28(g)(4) relate to violations discovered at branded distributor, reseller or ethanol blender facilities (40 CFR § 80.28(c)) and at branded retail outlets and wholesale purchaser-consumer facilities (40 CFR § 80.28(e)).

In such cases the refiner must meet all the elements of the defense in 40 CFR §§ 80.28(g)(4)(i) and (ii), and must meet one of the additional elements in 40 CFR § 80.28(g)(4)(iii). 40 CFR §§ 80.28(g)(4)(iii)(B), (C), (D) and (F) set forth the "contract defense."

First, the refiner must demonstrate the existence of a contract with the appropriate entity. This contract must have been designed to prevent the specific circumstances that caused the particular violation.

Second, there must be an adequate oversight program, such as periodic sampling and testing, to ensure compliance with the contractual obligation. This oversight defense element has been discussed in response to other questions in this section.

With regard to the contract itself, we feel it is inappropriate for EPA to set forth specific requirements regarding the necessary provisions of such contracts. Rather, such contracts will be evaluated on a case-by-case basis. However, the following is a partial list of broad areas that a contract should address:

- 1) The amount of sampling and testing that must be done by

the entity with whom the contract is in place (e.g., distributor).

2) Specific procedures and other specific requirements to assure that gasoline or blend stock is not commingled with gasoline that is to be marketed in areas having a lower RVP requirement, and to assure that gasoline is not shipped to areas having a lower RVP requirement. The specific requirements must be aimed at the circumstances as they exist with each entity. They must be more than mere recitals that the entity must avoid violating the volatility regulation.

3) Required training regarding the regulations and the procedures and requirements outlined in the contract to prevent violations.

4) Appropriate responses if gasoline having excessive volatility is identified by periodic sampling and testing or by any other means, including (where appropriate) reporting, corrective actions, steps to prevent future violations, steps to identify the cause of the violation, resampling and testing, increased sampling and testing, retraining, etc.

5) Appropriate responses if it is discovered that a person with whom a contract is in place is not in compliance with the contract provisions. Such responses should include affirmative actions which are reasonably calculated to compel the person to comply with the contract provisions.

9. Question: Where a violation is found at a retail outlet, when is the carrier who delivered the gasoline to the retail outlet liable, and how may the carrier establish a defense?

Answer: When a violation is found downstream from a carrier (i.e., not at the carrier's facility), the carrier is liable only if EPA is able to show that the carrier caused the violation. The only defense available to the carrier in such a case is to show that it did not cause the violation or that no violation occurred. The carrier defense at 40 CFR § 80.28(g)(1) applies only to violations found at carrier facilities.

10. Question: What records are required for purposes of establishing a defense, and for how long should these records be kept? What types of documents should be kept on site?

Answer: The regulations do not require a party to keep any specific records. However, to establish a defense, certain records will normally be needed by parties, such as refiner test records showing that the gasoline was in compliance when

delivered to the next party downstream, and records relating to oversight testing programs.

The statute of limitations for prosecuting violations under the Clean Air Act is five years from the date of discovery of the violation. A party therefore may wish to keep records related to establishing a defense for five years to protect itself.

The regulations do not require that records be kept on site. EPA inspections will be facilitated, however, if documents relating to product classification are made available to EPA inspectors on site. This would be of particular importance where the facility supplies both 9.0 and 7.8 psi areas, or where the product is to be used only for blendstock, is intended for export, or is in storage. In the absence of documents that provide this information (or other satisfactory evidence), EPA will assume that the gasoline is intended for sale in the area in which the party is located.

11. Question: How long must regulated parties maintain physical gasoline samples taken in conjunction with an oversight program? Have sample retention requirements changed for refinery testing? Terminals?

Answer: The Agency's policy with regard to sample retention has not changed. As in the past, the Agency will evaluate the adequacy of a refiner's test data and any party's oversight program on the basis of records of sampling and testing, rather than by evaluation of samples of gasoline. A retained sample could conceivably be useful in resolving a discrepancy between a company's and EPA's test results. Of course, the volatility of a sample is reduced by opening the container for the first test and may be reduced by mere storage, so that the ultimate usefulness of retained samples is questionable. If a company desires to retain samples in the event they are needed as a defense element, it would be best to coordinate the activity with an EPA laboratory correlation program.

12. Question: Can a party rely on tests done by another party or by an independent laboratory? Will a third party company assume any liability if their actions lead to violations?

Answer: Under certain circumstances tests performed by another party or laboratory may be acceptable, especially where the reliability of the tests is high (e.g., where a carrier contracts to have a supplier sample and test product immediately after delivery). Liability is not transferred to the third party who conducts the tests, however; the burden remains on the regulated party to demonstrate that any testing is performed in

accordance with the regulatory requirements, and that sampling methods and frequency are adequate.

13. Question: Where a single organization such as a co-op owns and operates a refinery, pipeline, and bulk plants which receive no product from outside this system, and where retail outlets and wholesale purchaser-consumers purchase all of their product from the organization, can a single oversight program satisfy the requirements of the RVP rule?

Answer: For a refiner, carrier, or distributor to establish a defense under the regulations, these parties must demonstrate an oversight program which includes periodic sampling and testing. An oversight program performed by someone other than the regulated party would satisfy this requirement so long as the sampling and testing is carried out in a manner which adequately monitors product quality at all appropriate places along the distribution network. In the scenario described in the question, the refiner must demonstrate testing of all product leaving the refinery, as well as periodic sampling at the remaining places along the distribution network (pipeline, bulk plants, retail outlets, etc.). The results of the downstream sampling program may justify a program of less frequent sampling, but it is unlikely that downstream sampling could be eliminated altogether. It is difficult or impossible for EPA to state a specific sampling frequency that is necessary. The frequency of sampling at the bulk terminals would depend in part on whether the system is truly closed. Moreover, the regulated parties are familiar with their system, equipment, personnel, history of problems with quality assurance, etc. Each of the separate regulated parties in the distribution network could agree to use a sampling program conducted by the parent organization, but if a violation is found by EPA and this oversight program is found to be deficient, the regulated parties will not be able to establish the oversight element of the defense.

14. Question: If a party has adjacent facilities (different divisions of the same company), or a company pipeline delivers gasoline to tankage owned by the same company, do they have to test continuously at both?

Answer: An appropriate sampling and testing program will depend upon the specific factual situation involved. If product is shipped from both facilities, testing should be done at both facilities. If product is transferred from one facility to the other through a pipeline used by the company to transport product exclusively between the facilities (i.e., a "tight system") before being shipped out, testing product just prior to its leaving the second facility may be sufficient to assure that the

product complies with the applicable RVP standard when it leaves the party's facility.

15. Question: The Clean Air Act Amendments of 1990 provide for a new defense for violations involving ethanol blend products. Describe this new defense and any regulatory changes made in accordance with the statutory provisions for this defense.

Answer: The new defense for violations involving ethanol blend products is for a distributor, blender, reseller, carrier, retailer, or wholesale purchaser-consumer who can demonstrate that: 1) the gasoline portion of an ethanol blend meets the applicable RVP standard; 2) the ethanol does not exceed its waiver condition under section 211(f)(4) (i.e., 10%); and 3) no additional alcohol or other additive has been added to increase the volatility of the ethanol portion of the blend. This defense provides protection from liability if the volatility of an ethanol blend exceeds the applicable standard by more than one psi when all of the requirements of the statute have been met. This statutorily mandated defense is in addition to, and does not supersede, any of the other defenses contained in the regulations.

The Clean Air Act Amendments also provide that a party may demonstrate the elements of the new defense by production of a certification or other evidence acceptable to the Administrator. Accordingly, on December 12, 1991, EPA amended the volatility regulations to include the new defense and to provide that a party may demonstrate the elements of the defense by production of a certification from the facility from which the gasoline was received. The new defense is limited to ethanol blends containing a minimum of 9% ethanol and a maximum of 10%. The regulations specify that, if the demonstration is made by a certification, it must be supported by evidence that the statutory criteria for the defense have been met, such as an oversight program conducted by or on behalf of the party alleged to be in violation, which includes periodic sampling and testing of the gasoline or monitoring the volatility and ethanol content of the gasoline. Such certification will be deemed sufficient evidence of compliance provided it is not contradicted by specific evidence, such as testing results, and provided that the party has no other reasonable basis to believe that the facts stated in the certification are inaccurate. In the case of a violation alleged against a retail outlet or wholesale purchaser-consumer facility, such certification will be deemed an adequate defense, provided that the party is able to show certificates for all of the gasoline contained in the storage tank found in violation.

16. Question: In the absence of a certification, as described above, what type of evidence will EPA accept regarding the ethanol content of gasoline for purposes of making a defense under section 80.28(g)(6)?

Answer: The best evidence that the ethanol content of the gasoline contains at least 9% ethanol but no more than 10% ethanol, is the result of an alcohol test conducted in accordance with the procedures specified in Appendix F to the regulations.

In the absence of such test results, the Agency will consider the following evidence in evaluating whether the gasoline had the proper ethanol content when it left the blender's facility: a) the results of a periodic testing program carried out by the ethanol blender; b) evidence of a quality control program carried out by the blender; c) records reflecting the actual blending of the gasoline in question, showing the amounts and types of products blended together; d) records maintained for the purpose of the IRS tax exemptions for ethanol use; e) records regarding the bulk volumes of alcohol and gasoline blendstock purchased; and f) evidence that any party downstream from the blender added, or had an opportunity to add, additional alcohol or gasoline to the product. Where a violation is found at the ethanol blender's facility based upon insufficient or excessive ethanol content, it will be very difficult for the blender to establish a defense. Where the violation is found downstream from the blender's facility, the evidence described above will be considered.

****17. Question:** Last season, EPA found several volatility violations at the retail outlet level that were due solely to an insufficient amount of ethanol in the sample. To qualify for the 1 psi allowance for ethanol blends, gasoline must contain between 9% and 10% anhydrous ethanol. Investigations of these facilities indicated that the ethanol blender/carrier had, according to the bill of lading, correctly picked up enough ethanol to comprise 10% of the final ethanol blend product. In light of this, what can ethanol blender/carriers, ethanol blender/terminals, and retailers do to prevent this kind of violation in the future?

Answer: Many of these violations were due to the addition of an ethanol product into a tank that contained some nonethanol product or vice versa. Even though each product was in compliance when it entered the tank, the resultant product was in violation due to insufficient ethanol to qualify for the 1 psi allowance. Other violations were caused by a combination of factors that ethanol blenders should take into account in determining whether the gasoline will meet the 9%-10% ethanol requirement.

First, when ethanol is purchased by a terminal from the

ethanol producer, it contains a certain amount of denaturant. Many blenders may assume that the ethanol product contains no more than 5% denaturant. If a person purchases 100 gallons of ethanol containing 5% denaturant, he is receiving 95 gallons of ethanol, or 95% pure ethanol. Placed in 900 gallons of gasoline, the anhydrous ethanol content would be 9.5% of the finished ethanol blend product. This amount, of course, would be within the allowable limit of between 9% and 10%. However, EPA has taken several samples of ethanol from the ethanol tank at various terminals and has found the product to contain as low as 92% ethanol (8% denaturant). Using the example above, placed in 900 gallons of gasoline, the anhydrous ethanol content would be 9.2%, which is still acceptable as long as nothing else occurs to lower that level.

Several conditions or factors occurring during transportation or after the product is placed in an underground tank at a retail outlet, however, may lower the ethanol content of the blend even further. Some examples are: rain contributing to water in the gasoline, splash blending and then traveling for short distances before delivery to the retail outlet, meters being incorrectly calibrated at the terminal, leftover gasoline product in in-line blending causing an insufficient amount of ethanol to be placed in the truck compartment, water in the underground tank at the retail outlet, gasoline sitting in the underground tank for long periods at the station without frequent deliveries. Many, although not all, of the violations involved slower moving product such as premium or leaded gasoline, which indicates that stratification from sitting too long without a delivery may be a significant cause. Even if the ethanol contains as little as 5% denaturant, it may require only a series of seemingly inconsequential circumstances such as those listed above to lower the ethanol content of the product below 9%. If the ethanol product contains more than 5% denaturant, the likelihood of one or more of these circumstances lowering the ethanol content to below 9% is even greater.

To avoid liability for violations caused by low ethanol content, terminal/ethanol blenders are advised to determine the true anhydrous ethanol content of their ethanol product and compensate for low ethanol in their blending procedures. Similarly, terminals who sell ethanol to blenders should inform the ethanol blender/carriers of the ethanol content. Ethanol blender/carriers should compensate for the true "purity" of the ethanol and should take care if they are splash blending and intending to travel only short distances. Retailers should check their underground tanks for water either daily or before deliveries. Retailers should also consider ordering smaller and more frequent deliveries of slow-moving product.

****18. Question:** EPA discovered RVP violations at a few retail outlets in two cities that were involved in the winter oxygenate program. The violations occurred when the retail outlets attempted to switch from gasoline with ethanol during the winter oxygenate season to ordinary gasoline after the end of the season. Small amounts of ethanol remaining in the underground tank contributed to a high RVP during the RVP season. Since many more cities were involved in the winter oxygenate program this past season, there is a greater potential for violations. What can a retailer do to prevent this type of violation from occurring?

Answer: Most retailers know that if you add 1000 gallons of 10.0 psi gasoline to 1000 gallons of 8.0 psi gasoline, you will get 2000 gallons of 9.0 psi gasoline. Therefore, retailers tend to add large amounts of low RVP gasoline to force the RVP down quickly. However, this same procedure can cause a retailer to violate the volatility regulations if he is changing from gasoline containing ethanol to ordinary gasoline. If you add 1000 gallons of gasoline with 10% ethanol to 1000 gallons of ordinary gasoline, you will get 2000 gallons of 5% ethanol gasoline. The problem with this method is that the RVP of gasoline containing 5% ethanol is about the same as the RVP of gasoline containing 10% ethanol - 1 psi higher than without the ethanol. However, since the gasoline does not contain between 9% and 10% ethanol, it would not qualify for the 1 psi allowance. Gasoline containing only 1% ethanol can still have a 1/2 psi boost from the ethanol and place the retailer in violation. Therefore, the method frequently used to reduce RVP - adding large amounts of low RVP gasoline - causes the retailer to have a large amount of product that is in violation when the RVP season arrives.

There are two solutions. One would be to pump out the tank. The second would be to allow the tank level to drop as low as practicable and order only a small amount of replacement product. This process should be repeated a few times until the ethanol drops to a level that does not boost the RVP. At that point, the underground tank can be tested for ethanol content and RVP. These violations in the 1992 RVP season tended to occur in slow moving product at stores with low turnover. Retailers with this problem should be especially careful.

19. Question: Is it necessary for retailers and wholesale purchaser-consumers to receive and keep certificates showing the gasoline they receive complies with the applicable RVP standard?

Answer: There is no requirement that retailers and wholesale purchaser-consumers have certificates showing receipt of in-compliance product to establish a defense for a violation

found at their facility. These parties must show, however, that they did not cause the violation, and an in-compliance certificate would be evidence for such a showing. Also, as discussed above, these parties may wish to obtain certifications for ethanol blend products to avail themselves of the certification defense against violations involving ethanol blends.

***20. Question:** Concerning the documentation element of the defense for distributors, resellers, ethanol blenders and carriers, is there any preferable terminology to be printed on bills of lading, invoices, or certificates concerning RVP compliance with the applicable standard (e.g., must the exact RVP be stated)? May the certification be contained on a pipeline shipment nomination document? Do certifications which refer to unspecified future shipments ("blanket certifications") satisfy the defense elements relating to such representations. Can "blanket certifications" satisfy the labeling requirement for blendstock? Will the refusal by a supplier to provide certification remove the requirement of the distributor who receives product that it obtain a certification of compliance?

Answer: As originally promulgated, the volatility regulations required that distributors, resellers, ethanol blenders and carriers (for violations at the carrier's facility) must (in addition to other elements) demonstrate through bills of lading, invoices, delivery tickets, loading tickets or other documents that the gasoline in question conformed to the standard when it was delivered to them to meet their defense. This defense element was ruled invalid as applied to carriers by the U.S. Court of Appeals for the District of Columbia Circuit in National Tank Truck Carriers v. EPA (902 F.2d 177 (D.C. Cir. 1990)). Accordingly, the final rule published on March 17, 1993, deletes this defense element for carriers, and also for distributors and ethanol blenders.

"Blanket certifications" would be inappropriate for identifying product that is being shipped as blendstock. If a refiner or importer believes that a particular product with high volatility is so clearly not gasoline that there is no conceivable way it could be used as gasoline, that party may decide to ship the product without labeling the product as blendstock. Such a decision would be at the risk of the refiner or importer, however; if someone downstream in fact sells, offers for sale, dispenses, supplies, offers for supply or transports the product as gasoline, the refiner or importer would not be able to take advantage of the blendstock defense if the product was not properly labeled as blendstock.

21. Question: If a motor gasoline cargo is transported in more

than one truck compartment, what are the test requirements to demonstrate compliance for the full cargo?

Answer: Oversight programs would need to provide for periodic sampling and testing of the various products handled. For a carrier or distributor oversight program, there would be no requirement to test each compartment of each truck for every delivery. However, because of the possibility that product carried in the different truck compartments is not homogeneous (particularly if gasoline was splash blended in the truck), the oversight program needs to include periodic sampling and testing of product carried in each of the truck's compartments separately, and not only of the truck as a whole.

22. Question: If a facility blends finished gasoline with raffinate and ethanol either in-line just prior to delivery to the purchaser's truck or splash blends the components in the truck itself, what will the RVP testing requirements be for this facility for purposes of meeting its defenses?

Answer: A party that obtains finished gasoline or gasoline blending stock and blends that product with any component other than ethanol (such as raffinate) will be subject to the refiner liability and defense provisions. Thus, it must test each batch of product that leaves its facility. If gasoline is blended in trucks, each truck compartment would have to be sampled and tested separately. Branded refiners would need to conduct additional oversight sampling and testing downstream.

Where both raffinate and ethanol are blended into the gasoline at the facility, with the ethanol blended in-line or splash blended into trucks, the refiner would not be relieved of its requirement to test each batch under the provisions of the current regulations. Obviously, testing each batch of blended product would be much easier if all components were blended and mixed prior to being released from the tanks. In the alternative, each batch of fuel containing all components other than ethanol could be blended and the resultant fuel tested and ethanol could be added at a separate ethanol blender's facility. The ethanol blender's facility would then be subject only to the liability and defense provisions relative to ethanol blenders. Obviously, if the would-be refiner facility in this scenario purchases finished gasoline and elects to add only ethanol, then only the ethanol blender liability and defense provision would apply.

23. Question: Where a branded retail outlet is supplied directly by the branded refiner and an appropriate contract is imposed by the refiner on such retailer, would a program of

reconciling deliveries to the retail outlet with pump meter readings (and the RVP of delivered product is included on the delivery documents) be an acceptable alternative to a sampling and testing program?

Answer: Since the refiner must test each batch of gasoline before it leaves the refinery, and since, in the above scenario, the refiner maintains control of the product until it reaches the retailer, an adequate oversight program might be developed which would include minimal sampling at the retail level. Nevertheless, in determining the sampling frequency at the retail outlets, a number of factors should be taken into consideration. These would include such matters as the opportunity for RVP to change between refinery and retail outlet, prior history of problems with individual retailers, and other factors discussed in this section.

24. Question: May distributors and resellers without bulk facilities establish an adequate oversight program that does not involve sampling and testing, but that does involve careful monitoring of amounts of product ordered, picked up, and dropped, and includes making oversight contracts with retailers and monitoring retailers' gasoline delivery records?

Answer: Contracts with retailers (and contractual oversight), monitoring gasoline delivery information, training, and other quality assurance measures may be useful elements of an oversight program. However, we believe periodic sampling and testing is necessary. If the distributor or reseller obtains product directly from the refiner and no commingling of product can take place, the distributor or reseller may be able to rely on the sampling and testing of the refiner, especially if a branded refiner's oversight program includes periodic downstream sampling and testing. If the product is received from a terminal, a trucker may be able to arrange for testing to be performed by the terminal immediately before or after delivery.

In any event, a distributor's or reseller's sampling program only needs to include periodic sampling, not sampling of all product delivered to it.

25. Question: May distributors or resellers with bulk facilities, but who do not manufacture, blend or alter product, establish an adequate oversight program by sampling and testing once at the beginning of the season? Must all retail outlets be sampled over the course of the season?

Answer: Distributors and resellers with bulk facilities but who do not alter the quality or quantity of gasoline, must

conduct periodic sampling of the fuel in their possession or ownership. Sampling once at the beginning of the season would be inadequate. However, there is no regulatory requirement that such distributors conduct sampling at the retail outlets which ultimately receive the fuel (although such sampling may be required as part of the branded refiner's oversight program).

***26. Question:** What is required for an adequate defense where noncomplying product is delivered by a third party on exchange?

Answer: The elements required for a defense to a violation incurred because noncomplying product was delivered by a third party on exchange would depend on the particular party and situation involved. For example, refiners are presumed liable (and the appropriate branded refiner defenses apply) for violations found at their branded retail stations, distributor and ethanol blender facilities, whether or not the gasoline was obtained through an exchange agreement. Refiners who supply gasoline to unbranded retail, distributor and ethanol blender facilities may also be presumed liable (and the appropriate refiner defenses apply) for violations found at those facilities, even where the refiner obtained the gasoline on exchange from another party. If, however, the refiner can demonstrate that the third party caused the violation, it may be able to meet the non-causation element of its defense. Other parties in the distribution chain who are presumed liable for a violation may also be able to satisfy the non-causation element of their defense if they can show that a third party caused the violation by delivering noncomplying product.

***27. Question:** The terminal operator often is not advised of the specific delivery location of each truckload of gasoline leaving the terminal. It is common for customer-supplied destination information to indicate only the destination state. Under such circumstances, how can the terminal operator create a defense against presumptive liability if the carrier delivers 9.0 psi gasoline from the terminal into a 7.8 psi standard area? If the terminal operator indicates on the bill-of-lading (or other appropriate shipping document) that the gasoline is not to be marketed in 7.8 psi standard areas, would this create a defense? If not, what more would be required of the terminal operator?

Answer: As indicated in Section B, Question 5 above, if a violation due to a misdelivery is found downstream from the terminal and the terminal is presumed liable for the violation, EPA will look to evidence demonstrating that the terminal: informed its customers at the beginning of the volatility season that it would be supplying 9.0 psi gasoline which should not be delivered to 7.8 psi areas; indicated on the sales documents that

the gasoline contained 9.0 psi RVP which should not be delivered to 7.8 psi areas; and labeled the tanks at the rack for RVP. EPA will also look for any evidence of misdeliveries on the bills of lading or other sales documents that should have alerted the terminal that a carrier was misdelivering a product.

****28. Question:** Where 9.0 psi gasoline is picked up at a terminal and misdelivered to a 7.8 psi standard area, will the oversight required of the terminal for defense be different at: a) a terminal operated by the supplier; b) a terminal operated by another party where the supplier maintains an inventory (under a terminalling agreement) involving i) segregated inventory or ii) commingled inventory; c) a terminal operated by another party where the supplier obtains gasoline from another supplier's inventory (under an exchange agreement). Will the oversight required of the supplier be different in these situations?

Answer: Where the violation is found downstream from the terminal, and the terminal is owned by the supplier, the terminal may be presumed liable as the distributor of the gasoline subject to the defenses for distributors, including oversight and noncausation. In the case of a misdelivery, the terminal's defense should include a showing that it had taken the steps outlined in the answer to Section B, Question 5, above, to ensure that 9.0 psi gasoline would not be delivered to a 7.8 psi area. Where the terminal is owned by another party, the terminal would be a carrier and is likely not to be presumed liable unless there is evidence that the carrier caused the violation. This would be true regardless of whether the product had been segregated or commingled, or obtained under an exchange agreement. However, as discussed in Section B, Question 5, in the case of a misdelivery, it will be difficult for a carrier to show that it did not cause the violation if it failed to take the suggested steps to ensure that 9.0 psi gasoline would not be delivered to a 7.8 psi area. The supplier may be presumed liable as the refiner and/or distributor whether or not it owned the terminal, and would be subject to the defenses for these parties including oversight and noncausation. This also would be true regardless of whether the product had been segregated or commingled, or obtained under an exchange agreement. Like the terminal, the supplier's defense should include a showing that it had taken the suggested steps to ensure delivery to the proper area. With the exception of a supplier who is a branded refiner parties are not required to conduct oversight of downstream parties.

****29. Question:** What does a refiner or terminal have to show to make a defense against a violation caused by tank stratification? Can a refiner or terminal sell gasoline out of the tank if such

sales are controlled to ensure that the high RVP gasoline will not be sold? Should the refiner or terminal notify EPA when it becomes aware of the problem, or just have a plan in place?

Answer: A stratified tank is one in which the RVP varies from one portion of the tank to the next. For example, at the start of the volatility season, a tank may have winter gasoline with higher RVP in the top portion of the tank and gasoline with lower RVP in the lower portions of the tank. If EPA tests gasoline from such a tank and finds the RVP to be above the standard in one portion of the tank, the facility will be liable for that portion, unless it can establish that it had appropriate controls in place for monitoring the gasoline (prior to EPA's inspection) to ensure that the high RVP gasoline would not be sold, offered for sale, dispensed, supplied, offered for supply, or transported in violation of the regulations.

Pumping the high RVP gasoline out of the tank is obviously the most effective way of ensuring that it will not be sold. Testing each batch of gasoline that leaves the tank, or an alarm system to prevent the sale of gasoline below a certain level may also be effective measures. The measures taken to prevent the distribution of the high RVP gasoline, however, will vary from facility to facility. It is up to each facility to institute measures that will be the most practical and effective. EPA will evaluate such measures on a case by case basis. Giving EPA advance notification of a stratification problem would be evidence that the facility was aware of the problem. Awareness of the problem without more, however, will be insufficient to defend against a stratification caused violation. As indicated above, the facility must be able to show that it had effective controls in place to prevent the sale of the high RVP gasoline prior to EPA's inspection. In the absence of such evidence, EPA will assume that the high RVP gasoline would have been sold but for EPA's inspection. With proper controls and evidence substantiating that no noncomplying was or will be sold out of the tank, gasoline meeting the applicable RVP standard may be sold out of a stratified tank.

F. TEST METHODS

***1. Question:** Which testing methods will EPA accept for purposes of testing compliance with the applicable RVP standard by importers, refiners and all upstream parties? What RVP test equipment will be recognized as establishing an acceptable defense, if used in testing finished gasoline for shipment out of a refinery, or receipt and sale from a remote terminal?

Answer: As originally promulgated, the volatility regulations prescribed two methods for purposes of testing compliance with the applicable RVP standard: the manual tank and gauge method and the Herzog method (Appendix E). Refiners and importers were required to use one of these methods to establish that gasoline was in compliance with the applicable standard when it was delivered to the next party in the distribution system. On March 17, 1993, EPA promulgated a final rule which deletes these test methods from Appendix E and replaces them with Method 3, the Evacuated Chamber Method, as the the method EPA will use for enforcement purposes.

The regulations as originally promulgated allowed upstream parties other than refiners and importers to use other test methods for purposes of oversight testing. The March 17, 1993 final rule extends this flexibility to refiners and importers. Refiners and importers, therefore, may use any test method for defense testing if adequate correlation to the EPA methodology contained in Appendix E is demonstrated.

****2. Question:** Why did EPA decide to replace the existing test methods with Method 3?

Answer: The reasons for replacing the methods in Appendix E with Method 3 are discussed at length in the preamble to the March 17, 1993 final rule. Briefly, EPA determined that Method 3 is as precise as the best test method originally contained in Appendix E, and will increase lab to lab precision. In addition, EPA found Method 3 desirable because of its ease of use, comparable instrumentation cost, and lower operating costs.

**** 3. Question:** Why did EPA choose the equation published in the Federal Register on March 17, 1993, for Method 3? It is based on limited data from only one lab and could be biased. Would EPA consider using the ASTM equation, which was established in the 1991 ASTM Round Robin?

Answer: EPA considered using the ASTM equation. The reasons EPA chose the equation published in the March 17, 1993

final rule are presented in the preamble to the rule, which includes a lengthy discussion of the advantages and disadvantages of both equations (See 58 Fed. Reg. 14481-82).

****4. Question:** EPA states in the March 17, 1993 final rule that ASTM "uses a larger set of data," which "increases the chance of error in the program." Usually, a larger sample size decreases the changes for error in a program. Is the use of the word "increases" an error in the Federal Register?

Answer: No. In the preamble to the March 17, 1993 final rule, EPA acknowledges that an advantage of the ASTM program is that it uses a larger set of data, and that a disadvantage of the EPA program is that its data set is smaller. However, EPA believes that the ASTM program's use of more laboratories increases the chances of error in the program owing to lab to lab variation. See 58 Fed. Reg. 14482 for further discussion of this issue.

****5. Question:** In our opinion, and considering what happens in actual use across any gasoline distribution system, choosing an equation developed via correlation of a very limited number of test instruments in a single laboratory is not realistic. For example, two Grabner instruments could test 2,2-dimethyl butane, (2,2-DMB), one at the low limit and the other at the high limit of acceptability (10.64 to 10.93 psi total pressure). These differences in test values for the 2,2-DMB will also be reflected in the vapor pressure test values for identical gasoline samples tested in both units. Will EPA tolerance levels account for these variations?

Answer: The question suggests that an intra-laboratory measure is appropriate for setting enforcement tolerances. EPA has consistently stated its belief that precision statistics for use in setting enforcement tolerances should be developed entirely within its own laboratory.

****6. Question:** Please discuss what EPA will consider adequate correlation to Method 3 for purposes of defense testing using another test method. Please supply specific guidelines or instructions on the appropriate use by refiners of the results of round-robin RVP testing conducted with EPA's Ann Arbor lab? How should a refinery incorporate any correlation bias (versus EPA's Grabner method) revealed by the round-robin testing? Is it appropriate for a refinery to average the individual differences between the refinery's RVP test results and those obtained by EPA, and then use this average bias as the correlation adjustment? Does the refinery somehow have to adjust its calculation (or its use) of the correlation bias to reflect the

variability (i.e., "scatter") of individual differences in RVP test results (refinery versus EPA)? If so, how should this be done?

Answer: Any round-robin testing conducted with EPA's Ann Arbor laboratory should not be used to establish a correlation with Method 3. Instead, table I gives the mean total pressure and mean RVP for the three standards of isooctane, 2,2-dimethylbutane, and n-pentane as measured by the EPA Ann Arbor laboratory by Method 3. A refiner choosing to use a test method other than Method 3 would use these values and the values obtained by it from the other method to develop (using appropriate statistical procedures) the correlation equation.

Table I - Mean Total Pressure and Mean RVP for Isooctane, 2,2-dimethylbutane and n-pentane as measured by the EPA Ann Arbor laboratory by Method 3.				
Standard	Mean Total Pressure	Standard Deviation	Mean RVP*	Standard Deviation
Isooctane	2.546	0.023	2.087	0.022
2,2-diemethylbutane	10.695	0.034	9.877	0.032
n-pentane	16.284	0.033	15.221	0.032

* - RVP psi = (0.956*X) - 0.347 or RVP kPa = (0.956*X) - 2.39 where X = total measured vapor pressure in psi or kPa.

Examples of the Dry Manual and Digital Herzog (transducer and gauge) test procedures and their respective correlation equations to Method 3 may be requested from the United States Environmental Protection Agency, Attention: Carl Scarbro, 2565 Plymouth Road, Mail Code SDSB-12, Ann Arbor, Michigan, 48105.

****7. Question:** Given that the Grabner is ASTM method D-5191-91 (1992 ASTM 5.03, p. 876, footnote 4) and that the "Setavap" method is also ASTM method D-5192-91, will EPA also allow the use of the Setavap instrument for final product gasoline compliance testing? In other words, are the Grabner and Setavap results equivalent as far as EPA is concerned? Will EPA accept the automatic (SwRI) instrument?

Answer: EPA will use the Grabner instrument for enforcement purposes; however, as discussed above, refiners and importers may use another instrument (or method) for defense purposes. It is EPA's understanding that the Setavap, Mini-UIC (when used with a vacuum pump), and SwRI instruments can meet the requirements as

specified in Method 3. It should be emphasized that if a party uses an instrument meeting the requirements of Method 3, then that party must use the equation in the Method 3 converting the total measured vapor pressure to RVP, as published on March 17, 1993, in the Federal Register (58 FR 14476). As indicated above, a party choosing to use a test method other than Method 3 must demonstrate adequate correlation to Method 3.

****8. Question:** How often is the refinery expected to update its calculation of the correlation bias? If a refinery has calculated its correlation bias using historical round-robin results, is the refinery expected to review and update correlation bias each time an additional round-robin result is received from EPA, or can the refiner elect to update its correlation bias on a fixed periodic basis (e.g., monthly, annually)?

Answer: It is up to the refiner to establish a schedule for the reevaluation of its correlation. Clearly, any time a refiner has data indicating a change in the correlation, then the bias should be corrected.

****9. Question:** California has a different correlation equation than the one given in the March 17, 1993 rulemaking. Which equation will apply to California ozone nonattainment areas?

Answer: The equation published in the Federal Register on March 17, 1993, will apply to enforcement of the federal rule in California as in any state. See Section K, Question 10 for further discussion of this issue.

***10. Question:** Does EPA plan to continue to use the portable Grabner analyzer for field enforcement purposes? Will violations be issued on results obtained in field tests using the Grabner test equipment, or will samples be sent to Ann Arbor for final determination as has been done in the past?

Answer: EPA will continue to use the Grabner Instruments model CCA-VPS for field screening during inspections. However, if an apparent violation is found, the sample will be sent to the Ann Arbor laboratory for testing using the Ann Arbor laboratory portable Grabner.

11. Question: How will variations between field measurements and the main laboratory be treated? For example, what if a field check reveals a 9.0 psi, but an identical sample sent by the enforcement officer to the main EPA lab measures 8.8 psi?

Answer: The results obtained by the laboratory in Ann Arbor will be used as the basis for determining noncompliance.

12. Question: Where can parties get RVP testing done? Will EPA accredit independent laboratories for RVP testing?

Answer: ASTM publishes a directory of testing laboratories every year, which may be obtained from ASTM at 1916 Race Street, Philadelphia, Pennsylvania 19103-1187.

EPA has no plans to accredit independent laboratories for RVP testing. However, EPA will establish a record, which will be available to the public, of correlation with a laboratory.

***13. Question:** Can a company that owns all stages of the refining and distribution chain use their in-house lab if they work with EPA to ensure a quality assurance/quality control program for their lab?

Answer: A company may use their in-house lab for sampling and testing for a quality assurance/quality control program if they use the procedures outlined in the regulations or another test method that is supported by appropriate correlation data.

***14. Question:** Assume a distributor/carrier is using a third party laboratory to perform testing for an oversight program, and that this third party lab plans to use the method as published in the final rule on March 17, 1993 (Method 3). In order to protect the distributor/carrier, must the third party lab prove correlation with the EPA lab? Will the third party lab be liable if they do not follow the correct test method? Is correlation only required if the third party lab intends to use other test methods?

Answer: Correlation testing with the EPA lab is not required if a party uses the test methodology in Appendix E. However, for any test method used, such correlation would serve to strengthen a party's defense to a RVP violation. Note, however, that appropriate correlation data must be provided when other test methods are used. A third party lab is not liable for RVP violations under the regulations.

***15. Question:** To what decimal place must test results be reported for the Method 3?

Answer: The regulations require that test results be reported to the nearest 0.01 psi for the Method 3 (as published in the final rule on March 17, 1993).

****16. Question:** Will values up to 9.04 psi (or 7.84 psi) be acceptable for defense purposes for refiners?

Answer: EPA considers values over 9.00 psi (or 7.80 psi) to be over the standard for purposes of a refiner's defense.

****17. Question:** Since no two instruments are exactly the same, it is not surprising to note that even when using the new EPA equation for conversion of Method 3 readings to RVPE, a bias still exists when the values determined in that manner are correlated directly with values determined on samples of the same gasoline on the instrument used at the Ann Arbor laboratory. While a great majority of these biases are not of very great magnitude, a few are as large or larger than 0.2 psi. Is it appropriate to correct for this bias prior to recording the data on the official refinery records showing compliance, or should the data obtained using the correlation formulas, obtained from EPA, be recorded on those documents?

Answer: The values obtained using the formula contained in Appendix E should be recorded.

***18. Question:** Is the acetone wash of the bomb in the dry manual method (described in Appendix E) required? Is this an environmentally unsound method for washing these instruments? Can a more compatible wash solvent be used?

Answer: EPA stated in the Notice of Proposed Rulemaking, published on October 18, 1991, that it had found a possible source of error in the Appendix E dry manual tank and gauge method cleaning procedure relating to use of the acetone wash solvent. EPA asked for comments regarding possible solutions. One commenter stated that the acetone was remaining trapped in the gauge. EPA subsequently determined, based on recent experiments in an API member laboratory, that changes to the procedure were warranted. In particular, EPA determined that the acetone should be replaced with n-pentane. The fact that acetone remains trapped in the gauge has the potential for being environmentally unsound, since contamination by acetone may affect the instrument's test results. However, since EPA deleted this method from Appendix E in the March 17, 1993 final rule, the changes regarding the wash method were not published in the Federal Register. These changes, nevertheless, are recommended for parties who use the dry manual or gauge method. Consequently, EPA has placed the appropriate changes in a memorandum to the Air Docket (Docket No. A-92-03, No. V-D-03).

19. Question: If EPA collects a sample at a facility that has a laboratory, will they perform or witness testing at that facility or will all samples be shipped elsewhere for testing?

Answer: All samples for which a field test indicates a possible violation will be shipped to Ann Arbor for testing.

20. Question: What happens if EPA test results of a particular sample of gasoline reflect a higher RVP than the respective regulated party's test results of the same gasoline? Is a party safe from liability if it conducts single or multiple tests or performs correlation testing with EPA?

Answer: In the context of an enforcement proceeding, any party may challenge the accuracy of EPA's test results. A party may present test results to EPA in order to show that a violation did not occur or to satisfy a required element of a defense that requires presentation of test results determined through the use of Appendices D and E of the volatility regulations.

Whether a party's test results will satisfy a required element of a defense will be determined on a case by case basis. In evaluating such evidence, EPA will look at the quality of the party's testing program to determine how much weight to give test results in a particular case. For example, EPA will place a higher value on test results if: 1) multiple samples (rather than a single sample) have been taken from a batch and tested; 2) the party's laboratory has run correlation tests with EPA's laboratory, an independent laboratory, or a national exchange program; and/or 3) a party's testing program includes regular verification using a standard of known RVP. Absent any indication of an irregularity in EPA's sampling and testing procedures with respect to the specific violation, EPA's test results will be presumed to be correct in any enforcement proceeding.

***21. Question:** EPA's Phase II gasoline volatility regulations issued in 1990 contained a 0.3 psi gasoline volatility enforcement tolerance. Will EPA change this test tolerance in light of its adoption of the Grabner test method?

Answer: In the preamble to the Phase II volatility regulations, published on June 11, 1990, EPA stated that it will take enforcement action only when it measures the RVP of the gasoline at more than 0.3 psi RVP greater than the applicable standard, provided that the responsible party measured the RVP at or below the standard. EPA, however, reserves the right to modify this policy if additional information indicates that a lower enforcement tolerance is appropriate.

***22. Question:** Assuming that the refinery laboratory's RVP tests show the gasoline to be at or below the applicable standard, can the next party in the distribution chain accept the gasoline as long as its oversight testing does not indicate that the gasoline is above the standard plus the enforcement tolerance?

Answer: Yes. However, the parties in the distribution chain should be aware that if EPA tests the gasoline to be above the standard plus the tolerance, it will bring an enforcement action against all parties presumed liable under the regulations.

23. Question: Given that a batch of gasoline is tested with satisfactory results at a refinery and the product is shipped on a fungible pipeline, does the gasoline require further testing when transferred to another fungible pipeline? If the gasoline is found to exceed the standard plus the test tolerance at the transfer point between the two fungible pipelines, what is the procedure for handling the product at that point?

Answer: To make its defense to a violation found at its facility, each pipeline carrier must have an oversight program in place, which generally will include periodic sampling and testing at a minimum. If the gasoline is tested to be above the standard plus the enforcement tolerance at the point of transfer between two fungible pipelines, the company in control of the gasoline at that point should take steps to ensure that the gasoline is not distributed until or unless it can be blended to the proper RVP level.

24. Question: When a fungible pipeline company receives a batch of gasoline, are there any requirements on when the sample from the batch should be tested? (e.g., mid-point of receipt, tank test after receipt, other?) Are there any limitations on size of the batch.

Answer: There are no requirements concerning when a sample should be tested or limitations on the size of the batch for purposes of oversight testing. Each company must determine what steps are necessary for effective oversight, given the company's particular operation.

25. Question: There is some confusion developing in the marketplace concerning which other ASTM specification should be associated with the Region 1 and Region 2 specifications? We believe that the regulations alter only the RVP specification. Therefore, the ASTM distillation and Vapor/Liquid Ratio specifications for Class A, B, C, D and E gasoline are unchanged because Region 1 and Region 2 RVP specifications only supersede

the old ASTM RVP specifications for all classes. Some are erroneously saying that the specifications that used to apply to a 9 psi (ASTM Class A) should now apply to both Region 1 and Region 2 gasoline. Can EPA make a statement that they are only changing the RVP specification in order to eliminate this confusion?

Answer: The ASTM distillation and Vapor/Liquid Ratio specifications for Class A, B, C, D and E gasoline for at least one of the Seasonal and Geographical Volatility Classes as specified in ASTM Standard D 4814-88 are required under the "Substantially-Similar" Rule [56 FR 5352].

G. SAMPLING METHODS

1. **Question:** What sampling procedures are authorized by EPA?

Answer: Generally, EPA restricts sampling procedures to one of the procedures prescribed in the regulations. However, the regulations provide that "alternative sampling procedures may be used if a mutually satisfactory agreement has been reached by the party[ies] involved and EPA and such agreement has been put in writing and signed by authorized officials." 40 CFR Part 80, Appendix D, §11.1. If the volatility sample collected by any of the prescribed procedures is found to exceed the standard, then the sample will be considered in violation.

2. **Question:** Does EPA have a sampling method preference?

Answer: At retail stations and wholesale purchaser-consumer facilities, samples are taken from the pump nozzle using the procedures specified in the regulations.

For large above-ground storage tanks, there are a number of sampling methods specified in the regulations. The ideal method for a given storage tank depends upon the conditions presented by the tank configuration, level of product, and presence or possibility of product stratification.

If the possibility of product stratification exists, "spot samples," or "tap samples" using suitable taps, should be collected from the "upper," "middle," and "lower" levels of the tank contents. Also, where stratification is known to be a problem, a "top sample" should be collected. This would assure compliance for the top portion of a bottom-fed storage tank, which is most likely to contain unmixed layers of left-over "winter" gasoline. If the tank is documented to be well blended and only one sample is to be used to represent the entire contents, "all-levels" or "running" samples are equally preferred. If all-levels or running samples cannot be obtained due to the storage tank configuration or equipment problems, then a middle sample, or a tap sample taken from a suitable tap nearest to the middle of the tank contents, is an appropriate substitute.

3. **Question:** What level does EPA prefer a sample be taken from a tank equipped with operating mixers?

Answer: The possibility of stratification should be assumed unless otherwise documented even on tanks equipped with operating mixers. Therefore, upper, middle, and lower samples

should be collected from tanks with mixers until documentation exists showing that a sample taken from anywhere in the tank is representative of the entire contents.

4. Question: Although continuous sampling is required for pipelines, the regulations are vague on what a continuous sample represents. One interpretation is that the sample should be representative of the product flowing past the probe at the time the sample is taken. Another interpretation is that the sample is representative of the entire batch. Which interpretation is correct?

Answer: Generally, EPA would consider a sample collected continuously or intermittently during the entire time the batch moved past the sampling probe to be representative of the entire batch, as we do with a running sample of a tank.

5. Question: Does EPA intend to verify industry compliance with proper sampling procedures as part of the volatility enforcement program?

Answer: In general, EPA does not plan to verify sampling procedures used by industry. However, in the context of an investigation as to the cause of an apparent violation, it is likely that EPA will evaluate the sampling procedures used to determine the validity of the test results presented by the alleged violator. Furthermore, during on-site inspections, if EPA notes incorrect procedures used by industry personnel, then it generally will inform industry personnel of such improper procedures.

6. Question: Will EPA issue a report or test results from a collected sample if no violation is found?

Answer: Yes, a copy of the field inspection report including the results of any field screening tests will be left with the person in charge (or designated) at the conclusion of each facility inspection. The only exceptions would be instances in which laboratory samples are collected for confirmation of ethanol content (when required) or quality assurance of the field screening process. The facility sampled may request the results of any such laboratory tests.

***7. Question:** Is EPA considering new sample size containers?

Answer: The volatility regulations as originally promulgated required the use of a container size of no less than

one quart. The final rule published on March 17, 1993, however, allows the use of smaller containers (not less than 4 oz.) for nozzle sampling. (For sampling tanks by the all-levels or running sampling methods, containers of not less than one quart are still required.) Consequently, although EPA continued to use the one quart "Boston Round" glass containers for all samples during the 1993 volatility season, EPA is considering using 4 oz. containers at the nozzle in the future.

8. Question: Is there an EPA approved video tape for sample procedure training?

Answer: EPA is aware of industry generated training tapes on RVP sampling. The Agency has no certification or approval process for such materials.

***9. Question:** Will EPA take multiple samples for analysis, do duplicate analyses of samples, or take joint samples with facility operators?

Answer: EPA plans generally to collect a single sample per tank to screen for RVP compliance. Additional samples may be collected where product stratification is suspected or for laboratory analysis to assure the quality of the field screening process. Facility operators may wish to take a duplicate sample for their own purposes. If requested, the EPA inspectors will provide assistance in obtaining such duplicate samples.

Field screening tests will consist of one test per sample using the field Grabner vapor pressure apparatus. If the results of the screening procedure indicate that noncompliance is a possibility, more samples will be collected. For above ground storage tanks, as many as six additional samples, consisting of "upper," "middle," and "lower" samples for both field confirmation and laboratory analysis, will be collected. At retail outlets, two additional samples of a product will be taken when field screening indicates the possibility of noncompliance: one sample to confirm the field screening results, and one sample for laboratory analysis.

Laboratory analysis will be conducted with the Grabner instrument using the regulatory methodology contained in Appendix E. Duplicate (actually replicate) analyses will be performed in the laboratory on individual samples for quality control purposes.

****10. Question:** For sampling finished gasoline tanks, is it suitable to pull a sample near the bottom of the tank, if it is

documented that the contents have been thoroughly mixed/blended?

Answer: Yes, if a tank is mixed homogeneously, a "spot" or "tap" sample from any portion of the tank will be acceptable to EPA as being representative of the entire tank contents. Documentation of the mixing process should include verification that the process works and that the process was performed before sampling.

****11. Question:** Will EPA use alternative sampling methods where it is known that a tank's gauge tube does not provide a representative sample of the gasoline in the tank?

Answer: Yes, EPA will use alternative sampling points or methods when it is determined that a tank's gauge tube contents are unable to completely mix with the outside tank contents.

The objective of RVP sampling is to collect a representative portion of the tank contents. When sampling from gauge tubes, EPA inspectors first check for perforations that will ensure a proper representation of the tank contents. If the gauge tube is not perforated, or a facility representative provides evidence that the gauge tube contents are not representative of the tank, the inspector will seek an alternative sampling point or method.

In the following order, the alternative sampling points are: other acceptable roof ports or gauge tubes located on the same tank, taps located at or near the tank height, a tap located along the pipeline feeding a loading rack, or a tank truck or barge which has loaded from the tank.

****12. Question:** Is an "in-line blending" sampling method acceptable for defense purposes if adequate correlation to the regulatory sampling methods is demonstrated?

Answer: An in-line blending sampling method would be acceptable for defense purposes, assuming the party has data showing that the samples obtained are representative of the gasoline contained in the tank.

H. INSPECTIONS

1. Question: Where will EPA focus its enforcement efforts; how will EPA target particular facilities for inspection; and who will conduct EPA sampling this summer?

Answer: EPA conducts inspections at all regulated facilities; however, the main targets are refineries, terminals and retail outlets. Inspections are conducted primarily by authorized contractor personnel and EPA staff on a random basis. EPA will pay particular attention to facilities in and around areas with the 7.8 RVP standard to assure that product designed to meet the 9.0 RVP standard is not delivered to the 7.8 RVP areas.

2. Question: With what frequency does EPA anticipate sampling pipeline carriers vs. pipeline terminals vs. retail stations?

Answer: EPA plans to inspect all types of facilities. The main targets of EPA inspections, however, will be refineries, terminals, and retail outlets.

3. Question: Will EPA conduct audits of upstream facilities, including pipeline terminals? Will refineries be audited first?

Answer: The Agency concentrates on sampling and testing by EPA and its contractors as the primary means of monitoring compliance. Starting with the 1992 season, field inspections included record reviews at terminals bordering 7.8 RVP areas to ensure correct deliveries of product intended only for 9.0 RVP areas. EPA supplements the field inspections with audits of any regulated facility during investigations of noncompliance to determine the full extent and source of violations.

4. Question: Will gasoline volatility enforcement criteria or procedures be different in 7.8 psi standard areas vs. 9.0 psi standard areas?

Answer: Enforcement criteria will be the same in all areas of the country. However, as indicated above, field inspections will include more thorough investigation at terminals within the delivery range of 7.8 RVP areas to ensure correct deliveries of product designed only for 9.0 RVP areas. EPA will use this information to target downstream inspections if nonconformities are found.

5. Question: How are EPA inspections conducted?

Answer: The authorized EPA inspectors will clearly identify themselves, present their appropriate credentials and state the purpose and nature of the inspection before beginning their procedure. Generally, one sample per storage tank of finished product will be screened in the field for RVP compliance. If the field screening test indicates a potential violation, a laboratory sample will be collected and analyzed in accordance with the regulatory procedure. When EPA inspects an upstream party that supplies facilities in both 9.0 psi and 7.8 psi standard areas, the inspectors will ask to see documents indicating where the gasoline is being shipped and other evidence indicating that the party has taken appropriate steps to ensure that the gasoline will be shipped to the proper area. See Section B, Question 5, for further discussion of this situation.

6. Question: What information can refiners and other regulated parties provide to expedite inspections?

Answer: At the start of an inspection, a party can advise EPA concerning applicable safety requirements for obtaining samples from the storage tanks. It can also provide information concerning the type of storage tanks in which the finished product is stored (e.g., floating roof tank or fixed roof tank) and the type of gauge tubes that are used (perforated or solid). At the time of the inspection, a party should provide documentation and other evidence indicating whether product is blendstock or finished gasoline and the intended destination of the gasoline (i.e., 7.8 psi or 9.0 psi area). To expedite record reviews at terminals and refineries, records of sales or other commercial documents should be available and separated by products designed to meet the 7.8 and 9.0 RVP standards.

7. Question: How will EPA inspect unmanned terminals that are entered with "keys" by various purchasers lifting products from common storage?

Answer: EPA will coordinate with the terminal owner/operator to gain access to the terminal and records relating to product stored at the terminal.

I. NOTIFICATION OF VIOLATIONS

1. **Question:** What procedure will EPA follow to notify companies of violations; to resolve violations?

Answer: When a field test indicates gasoline may be in violation of the applicable standard, EPA inspectors will distribute to the facility an information sheet indicating that they found a potential violation and the steps EPA recommends the retailer take to mitigate the violation. EPA generally also will inform other identifiable parties who have potential liability when a field test indicates a potential violation. EPA subsequently will issue a Notice of Violation to the presumptively liable party(s) identifying the violation and setting forth a proposed penalty amount. A party then may present evidence to establish that the violation did not occur or to support a defense as set forth in the regulations. If the party is able to make such a showing, EPA generally will drop the action. If it is not, EPA will attempt to negotiate a settlement with the party. If negotiations for settlement fail, depending on the nature and magnitude of the case, EPA will either initiate an administrative action, which affords the liable party an opportunity for a hearing before an administrative law judge, or refer the case to the Department of Justice with a recommendation that a complaint be filed in federal district court to recover the statutory penalty.

2. **Question:** How quickly will EPA notify parties of violations?

Answer: EPA will contact parties as soon as possible after the field test results indicate that a violation has occurred. The Notice of Violation is usually issued within a few months of the laboratory verification of the violation.

3. **Question:** Some companies' experience in the volatility control program has been that no one in the distribution system is notified by the Agency when compliance testing at the retail level takes place. Consequently, opportunities to react promptly to incidents of alleged noncompliance are lost. While they recognize the Agency's right to conduct this testing, they believe that it is EPA's responsibility (in order to provide the most benefit to human health and the environment) to notify the retail station management of a sampling event and allow them the opportunity to obtain a split sample. EPA should comment on this recommendation.

Answer: As indicated above, when a field test indicates a potential violation, EPA inspectors will distribute an

information sheet to the retail station indicating that they found a potential violation and the steps EPA recommends the retailer take to mitigate the violation. EPA also will inform all identifiable parties who have potential liability as soon as possible after a field test indicates a potential violation. EPA will allow any retailer to obtain a split sample if the retailer so desires. Official laboratory test results will be provided to any regulated party as soon as available, if requested.

4. Question: What are the penalties for an RVP violation? Will the amount of a penalty take into account the RVP level and volume of product in violation?

Answer: The statutory penalty for violations of § 211 of the Clean Air Act, under the authority of which the volatility regulations are promulgated, is up to \$25,000 per day per violation and the amount of the economic benefit or savings resulting from the violation. Under EPA's volatility penalty policy, proposed penalties are based upon the economic benefit from the violation and the gravity of the violation (derived from the amount of RVP over the standard and volume of product in violation), adjusted for prior violations and, in certain cases, business size.

J. REMEDIAL ACTION

***1. Question:** What should a party do if it discovers product having excess volatility during the course of an oversight program? How may a party remedy such a violation? Can the high volatility gasoline be transported or sold? Will EPA allow or require reblending? Will EPA close the facility? Will EPA initiate an enforcement action based upon the violation? Is the party required to notify EPA? What if the product is already downstream?

Answer: The company should promptly take steps to remedy both the violation and the conditions which caused the violation. The violation can be remedied in one of several ways, including the following: a) reduce the volatility by blending lower volatility product with the high volatility gasoline; b) transport the gasoline to an area having a volatility standard with which the gasoline complies; c) store the gasoline until the compliance period ends; d) transport the gasoline to a refinery or other facility. Transportation is appropriate only for the purpose of correcting the high volatility; and storage is appropriate only when high volatility gasoline was discovered through an oversight program, the stored gasoline is sealed until a time when the product can be distributed, and the gasoline is clearly designated as product that is not intended to be sold, supplied, dispensed, transported or distributed.

EPA has no authority to require any of these remedial actions, or to close a facility. EPA will, however, exercise its discretion and will not initiate an enforcement action on the basis of high volatility gasoline discovered by a company, providing the following conditions are met: a) the violation was the result of an accident or a mistake (i.e., was not based on a decision to sell, dispense, supply or transport high volatility gasoline, or an action in disregard of the regulations); b) the company completely corrected the violation (e.g., upon discovery the company took all steps possible to assure the high volatility gasoline which was on hand or which had already been distributed downstream was immediately corrected); c) the company took appropriate action to ensure future violations will not occur (e.g., where a refiner discovers high volatility product caused by a reseller's failure to comply with product handling procedures contractually imposed by the refiner on the reseller, the refiner took steps to compel compliance with the contract); and d) the remedial actions are not the result of an EPA inspection or investigation.

Any sale, supply, offering for sale or supply, dispensing, or transport (other than transport only to correct a violation)

would constitute continued additional violations of the regulations. EPA is unwilling to grant a waiver to allow use of high volatility product, except under the conditions set forth in 40 C.F.R § 80.27(e), which provides for an exemption of the RVP standards for testing purposes. (See Section B, Question 12.)

2. Question: What should a company do if it is notified that EPA has discovered a violation? Will any remedial action affect the penalty?

Answer: The company should immediately take remedial actions to correct the violation and the conditions which caused the violation (as described in the previous question). Such actions will be considered by EPA in mitigating any penalty imposed because of the violation.

3. Question: What will the Agency's procedure be for allowing (or not allowing) gasoline sales when high gasoline RVP is indicated by the field test instrument.

Answer: In the event EPA inspectors inform a company that a volatility field test shows gasoline has excess volatility, the Agency views this as notice to the company of a possible violation of the regulations. While the regulations do not give EPA the authority to stop the sale of non-complying product, if the EPA laboratory confirms the gasoline has excess volatility, the company will be entitled to penalty mitigation only if appropriate remedial action was taken as soon as the company was told of the failed field test.

4. Question: What is the procedure to verify that a tank is back in compliance once corrective action has been taken?

Answer: A determination of the RVP of the tank following EPA sampling and testing methodology is recommended.

K. STATE VOLATILITY PROGRAMS

1. Question: What is the effect of EPA's regulations on state volatility regulations? Will EPA preempt state regulations?

Answer: EPA's regulations preempt state and local volatility regulations unless one of the following exceptions apply:

- a. The state control is identical to the federal control.
- b. The state regulation has been approved by EPA as a State Implementation Plan (SIP) amendment which is necessary to achieve a national ambient air quality standard.
- c. The control was prescribed by a state which received a section 209(b) waiver. (Only California has received such a waiver.)
- d. The state control is not done for the purpose of motor vehicle emission control.

***2. Question:** What is the current status of Colorado's request for a change in the federal RVP standard from 7.8 psi to 9.0 psi? What is the status of South Carolina's request for a similar change in Cherokee County?

Answer: On April 30, 1993, EPA approved Colorado's request for a change in the federal RVP standard from 7.8 psi to 9.0 psi in ozone nonattainment areas in Colorado for the 1993 volatility season (58 FR 26067). Colorado has also petitioned for a similar change for the 1994 and 1995 volatility seasons. EPA is currently reviewing this petition. On September 1, 1993, EPA approved South Carolina's request for a change in the federal RVP standard from 7.8 psi to 9.0 psi in Cherokee County (58 FR 46508).

3. Question: Will EPA delegate enforcement authority to the states? Are states going to do any testing?

Answer: EPA cannot delegate its enforcement authority to the states. In some instances, states with their own approved volatility standards may inspect for violations of state RVP standards and enforce them themselves. In some instances, state or local agencies may act as authorized representatives of EPA for the purpose of collecting samples or conducting investigations.

4. Question: Is it possible for states and the EPA to conduct independent compliance testing at a given facility?

Answer: Yes.

5. Question: In states in which EPA has approved a SIP that calls for more stringent RVP specifications than the federal standard, will EPA relinquish enforcement of volatility controls entirely to such states? If not, will EPA test facilities for compliance with the federal RVP specification or the lower state RVP level?

Answer: Beginning in the 1992 volatility control season, the federal standards were changed to 9.0 psi, and 7.8 psi in certain ozone nonattainment (or former nonattainment) areas, making the federal standards generally the same or more stringent than the approved state SIPs. However, both the federal and state standards are enforceable where there is an overlap of jurisdiction, such as in any state or area that has had final approval of a SIP revision and in states having standards that were promulgated for purposes other than motor vehicle emission control. Therefore, where both state and federal standards are in place, the regulated industry is required to comply with both standards. EPA will test regulated facilities in such states and will enforce the federal standard.

6. Question: To the extent that any aspect of an approved state regulation is more stringent than the EPA rules, will the more stringent portion of the state rules continue to apply?

Answer: Yes. For example, the federal standard is 9.0 psi for all upstream parties in all states during the month of May. Where a state SIP provides for a more stringent standard for May, the state rule continues to apply.

7. Question: Several states have regulated gasoline to meet ASTM specifications for several years for reasons not related to motor vehicle emission control. In these states, will the EPA rule preempt state ASTM specifications if the ASTM limit is more restrictive?

Answer: The federal standard does not preempt the state standard. However, even where an aspect of the state standard is more stringent, EPA can enforce a violation of its less stringent standard.

8. Question: Will states with unapproved SIPs, or pending SIP requests for approval, be allowed to sample, test and enforce

state RVP regulations?

Answer: States whose regulations are for the purpose of emission control cannot enforce their regulations unless EPA approves a SIP amendment by finding that the control is "necessary to achieve" an ambient air quality standard or the state standard is identical to the federal standard (or one of the other preemption exceptions described in answer to Question 1 above is satisfied).

***9. Question:** Will states with approved SIP revisions be enforcing their regulations using testing procedures that differ from EPA's? If a state has an approved SIP that requires the use of one of the two test methods contained in Appendix E of the federal volatility regulations as originally promulgated, will the state be required to change its rule to reflect the change in the test method in Appendix E, published on March 17, 1993?

Answer: As discussed in the answer to Question 1, Section F, the volatility regulations as originally promulgated included two test methods, the manual tank and gauge method and the Herzog method. As part of the SIP approval process, states were required to use one of these approved methods of testing. The final rule published on March 17, 1993, deleted these test methods from Appendix E and replaced them with the Evacuated Chamber Method (Method 3) as the method EPA will use for enforcement. EPA, however, will not require these states to promulgate changes to their regulations to conform to the change in the test method in Appendix E. These states may want to consider revising their regulations or enforcement policies to provide for use of Method 3.

****10. Question:** California's volatility regulations include a different equation for the Grabner instrument than the one published in the Federal Register on March 17, 1993. Which one are refiners required to use in California?

Answer: The Federal RVP standard in California is 9.0 psi except for ozone nonattainment areas, where the standard is 7.8 psi. California's regulations, however, provide for a 7.8 psi standard throughout the state (through 1995). California's control periods also vary from and are generally longer than the Federal control period. EPA will be enforcing its standards using the equation in Appendix E to the federal volatility regulations, published in the Federal Register on March 17, 1993, during the federal control period in all areas of the country, including California. Refiners are required to use the test methodology contained in Appendix E, or a different test method if adequate correlation to the test methodology in Appendix E is

demonstrated. Presumably, in those areas of California where the federal standard is 9.0 psi, EPA will not find a violation of its standard regardless of the equation used by refiners.

11. Question: Why does not the EPA develop a cooperative effort with the state petroleum inspection programs? This would be an effective method of enforcement that is already in place.

Answer: EPA is willing to work with the states to develop state enforcement programs and to train state inspectors. In past years, EPA has made an effort to coordinate its sampling and testing program with state programs.

***12. Question:** Is there a vehicle in the federal volatility regulations that would allow EPA to control the state RVP regulations such that the patchwork of state and city regulations could be eliminated resulting in a consistent set of regulations for contiguous states in a logistical region?

Answer: EPA evaluates the state volatility SIP requests individually. The Agency's determination is based upon whether the state regulation is "necessary to achieve" a national ambient air quality standard. EPA is not able to use the SIP review process to effect changes to the state regulations which do not impact the "necessary to achieve" determination. Generally, however, beginning in 1992, the federal standard has been as stringent or more stringent than the state standard and regulated parties are required to meet the federal standard.

13. Question: New Jersey allows for a testing tolerance while several other northeastern states do not. Does EPA plan to require consistency in the testing tolerance area in the states?

Answer: EPA will leave the issue of testing tolerance to each state for state RVP rules.

14. Question: Do any regulatory variance measures exist in the event new gasoline RVP regulations cause fuel shortages or severe economic penalties in some states or areas, especially rural locations?

Answer: The regulations do not provide for regulatory variance measures. As discussed in Section B, Question 1, above, the Clean Air Act Amendments of 1990 mandate an RVP standard of 9.0 psi, and allow EPA to impose a standard lower than 9.0 psi only in ozone nonattainment and former nonattainment areas. States, however, may request that EPA adjust their standard to

respond to local issues, within the statutory limits.