

State Plan. If no significant, material, and adverse comments are received by July 27, 1998, this action will be effective August 25, 1998.

If the EPA receives significant, material, and adverse comments by the above date, this action will be withdrawn before the effective date by publishing a subsequent document in the **Federal Register** that will withdraw this final action. All public comments received will be addressed in a subsequent final rule based on the parallel proposed rule published in today's **Federal Register**. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective August 25, 1998.

III. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995, memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Pursuant to section 605(b) of the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under federal, State or local law, and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted on by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 25, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2), 42 U.S.C. 7607(b)(2).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Emission

guidelines, Intergovernmental relations, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: June 8, 1998.

Chuck Findley,

Acting Regional Administrator, Region 10.

40 CFR Part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart MM—Oregon

2. Section 62.9350 is amended by adding paragraphs (b)(5) and (c)(5) to read as follows:

§ 62.9350 Identification of plan.

* * * * *

(b) * * *

(5) Control of landfill gas emission from existing Municipal Solid Waste Landfill plan was submitted by Oregon Department of Environmental Quality on May 14, 1997.

(c) * * *

(5) Existing municipal solid waste landfills.

3. Subpart MM is amended to add § 62.9510 and a new undesignated heading to read as follows:

Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.9510 Identification of sources.

The plan applies to all existing MSW landfill facilities in Oregon meeting the requirements as stated in their State regulations.

[FR Doc. 98-17119 Filed 6-25-98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL-6114-4]

Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is amending certain requirements of the reformulated gasoline (RFG) regulations which are applicable to California gasoline refiners, importers and oxygenate blenders. These amendments

add flexibility with regard to test methods, sampling and testing requirements, and the use of gasoline that does not meet the oxygen requirement for Federal RFG in California areas that are not Federal RFG areas. EPA is taking this action in order to reduce the burden associated with overlapping California and Federal regulations. There is no expected adverse environmental impact from this final action.

EFFECTIVE DATE: This rule becomes effective on July 27, 1998.

FOR FURTHER INFORMATION CONTACT: Anne Pastorkovich, U.S. Environmental Protection Agency, Office of Air and Radiation, (202) 564-8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers and oxygenate blenders in California

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. RFG Standards and California Covered Areas

Section 211(k) of the Clean Air Act (the Act) requires EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas (Federal areas), as well as "anti-dumping" requirements for conventional gasoline used in the rest of the country, beginning in January 1995. The federal RFG covered areas in California are Los Angeles, San Diego, and Sacramento. The Act requires that RFG reduce ozone forming volatile organic compounds (VOCs) and toxic emissions from motor vehicles, not increase emission of oxides of nitrogen (NO_x), and meet certain content

standards for oxygen, benzene and heavy metals. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR part 80, subparts D, E, and F.¹

B. Exemptions Specifically Related to California Gasoline

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California "Phase 2" gasoline. The CARB regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_x, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles.² The CARB regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T-50 and T-90, respectively)—applicable starting March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.³

During the Federal RFG rulemaking, and in response to comments by California refiners, EPA concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or more stringent than the Federal Phase I RFG standards (applicable from January 1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would in practice be equivalent to the Federal content standards,⁴ and (3) that the CARB's compliance and enforcement program is designed to be sufficiently rigorous.⁵ While the Federal RFG and conventional gasoline standards continue to apply in California, refiners, importers, and oxygenate blenders of gasoline sold in California (referred to collectively as "California refiners") are exempt in

most cases from various enforcement-related provisions.⁶ California refiners are not exempt from these Federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover gasoline exported from California.

C. Issues Raised by WSPA & EPA's Response

In letters of June 15, August 3, and November 10, 1995, the Western States Petroleum Association (WSPA), on behalf of California refiners, petitioned EPA to revise the enforcement-related exemption provisions at 40 CFR 80.81. The three principal areas discussed in the petition are the gasoline testing methods, the standard for Reid vapor pressure (RVP), and use of California certification methods without minimum oxygen content requirements. (These certification methods, the predictive model and the vehicle emissions testing model, are discussed in greater detail below.) In February 1996, EPA notified WSPA that EPA would initiate rulemaking to address these issues.⁷ Since the California Phase 2 program was scheduled to begin March 1, 1996, EPA announced that it would grant California refiners temporary relief through specific exemptions from enforcement-related test methods, oxygen content of gasoline not used in the RFG areas, and RVP. This temporary relief would remain in place until the rulemakings could be completed.

A final rule related to the RVP standard was published as a direct final rule in the **Federal Register** on May 8,

⁶Specifically, the Federal RFG regulations at § 80.81 provide that, subsequent to March 1, 1996 (the start of the California Phase 2 program), the specified parties are exempt from meeting the enforcement requirements dealing with: compliance surveys (§ 80.68), independent sampling and testing (§ 80.65(f)), designation of gasoline (§ 80.65(d)), marking of conventional gasoline (§§ 80.65(g) and 80.82), downstream oxygenate blending (§ 80.69), record keeping (§§ 80.74 and 80.104), reporting (§§ 80.75 and 80.105), product transfer documents (§ 80.77), parameter value reconciliation requirements (§ 80.65(e)(2)), reformulated gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) compliance requirements (§ 80.65(c)), annual compliance audit requirements (§ 80.65(h)), and compliance attest engagement requirements (subpart F). Various restrictions apply to the exemptions, and the exemptions do not apply after December 31, 1999.

⁷See letter from Mr. Steve Herman, Assistant Administrator for Enforcement and Compliance Assurance, EPA, to Mr. Douglas Henderson, Executive Director, Western States Petroleum Association, dated February 29, 1996. A copy of this letter has been placed in the docket at the location listed in the **ADDRESSES** section.

¹See 59 FR 7812 (February 16, 1994), as amended at 59 FR 36964 (July 20, 1994); 60 FR 2699 (January 11, 1995); 60 FR 35491 (July 10, 1995); 60 FR 65574 (December 20, 1995); and 62 FR 68196 (December 31, 1997).

²See Title 13, California Code of Regulations sections 2250-2272 (as amended January 26, 1996).

³*Id.*, sections 2265 and 2266.

⁴As is discussed in section entitled "Oxygen Standard," below, however, this is not now the case.

⁵See 59 FR 7758, 7759 (February 16, 1994) and 40 CFR 80.81.

1996, and became effective on July 8, 1996.⁸

III. Description of Today's Action

On April 16, 1997 EPA published a proposal addressing the remaining two issues: gasoline testing methods and the use (in conventional gasoline areas) of gasoline certified by California methods not meeting the Federal RFG standard for oxygen content.⁹ Some additional issues were addressed in the proposal, including sampling and testing, and these are discussed in greater detail below. EPA proposed changes very similar to the temporary enforcement exemptions granted to the California refiners in its February 1996 letter.

A. Test Methods

Both the Federal RFG and the California Phase 2 programs specify testing methods to demonstrate compliance with the standards applicable under each program. However, in the case of the tests for four parameters (benzene, sulfur, oxygen, and aromatics) the methods¹⁰ specified under the two programs are different.

The applicable exemption in the Federal RFG regulation at 40 CFR 80.81(h) allows California refiners to use the California test methods prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.*, instead of the Federal test methods prescribed at 40 CFR 80.46, when producing California Phase 2 gasoline that is used in California. However, California refiners are still required to use the Federal test methods prescribed at 40 CFR 80.46 for gasoline that is used outside California, including conventional gasoline subject to the anti-dumping standards specified at 40 CFR 80.101.¹¹

WSPA, on behalf of California refiners, requested that EPA extend the test method exemption at 40 CFR 80.81(h) to cover the conventional gasoline produced by California refiners that is exported from California to other states. WSPA asked for this change because a refiner who is utilizing the flexibility of the CARB testing methods for gasoline sold within California,

would have to also use the Federal test methods to certify the same gasoline for export to surrounding states.

After considering the issues raised, EPA believed that, under certain conditions, it may be appropriate to allow the use of non-Federal test methods for conventional gasoline exported from California. Absent relief, a California refiner that chooses to utilize the flexibility of the CARB testing methods would have to implement the Federal test methods in order to certify its conventional gasoline for distribution outside California.

EPA further believes that the standards under the California Phase 2 program are expected to result in emissions decreases at least as great as with Federal Phase I RFG and emissions levels of conventional gasoline and CARB is expected to enforce the California standards in a comprehensive, aggressive manner that will result in high compliance. The Agency does not believe that any environmental detriment would be likely to occur from allowing the use of the CARB test methods for conventional gasoline produced in California, but shipped out of state for use in non-RFG areas.

In its February 29, 1996 response to WSPA, EPA indicates its intention to change the Federal RFG regulations to allow additional testing flexibility for California refiners and immediately gave California refiners additional flexibility for a limited time. In that letter, EPA states that if certain conditions are met it will not enforce the requirement at 40 CFR 80.65(e)(1) and 40 CFR 80.101(i)(1)(i)(A) to test conventional gasoline using the Federal test methods specified under 40 CFR 80.46 for benzene, sulfur, oxygen or aromatics, with regard to gasoline that is produced in or imported into California but that is used outside California.

In order to qualify for this enforcement relief, the refiner or importer was required to meet certain conditions, as described in great detail in the February 29, 1996 letter and in the notice of proposed rulemaking.¹² Furthermore, equivalency between CARB and Federal test method results must be established, since the methods themselves are not necessarily equivalent and therefore different methods (if not correlated) would yield different results.

Thus, to qualify for the relief, EPA proposed that the gasoline must be

produced at a refinery located in California at which gasoline meeting the California Phase 2 standards and requirements is produced, or the gasoline must be imported into California from outside the United States as California Phase 2 gasoline (i.e., gasoline that meets the standards and requirements of the California Phase 2 program). When exported from California, such gasoline may not be classified as Federal RFG. Furthermore, the refiner must correlate the results from any non-Federal test method to the method specified under 40 CFR § 80.46 for any gasoline that is used outside California, and such correlation must be demonstrated to EPA upon request.

EPA proposed to amend 40 CFR 80.81 to incorporate the flexibility regarding test methods that EPA temporarily granted in its February 29, 1996 letter to WSPA. EPA proposed this action because the Agency believes that it may result in lower compliance costs and greater flexibility for California refiners and because there is no expected adverse environmental impact from this proposed action.

B. Oxygen Standard

Section 211(k) of the Clean Air Act requires that the RFG standard of 2.0 weight percent (wt%) minimum oxygen must be met in each Federal RFG area. When EPA promulgated the California enforcement exemptions at 40 CFR 80.81, it was intended that the statewide standards for California Phase 2 gasoline would be equal to or more stringent than all Federal RFG standards. With regard to oxygen content, the California Phase 2 standards included a statewide flat limit of 1.8 to 2.2 wt% oxygen that EPA considered, in practice, to be equivalent to the Federal standard of 2.0 wt% minimum. As a result, EPA did not need to distinguish between California Phase 2 gasoline used in the Federal RFG areas within California, from the California Phase 2 gasoline used in the other areas of California, in order to have confidence that RFG standards would be met in each Federal RFG area in California.

The final California Phase 2 requirements were changed, however, and now allow gasoline that does not meet the Federal RFG standard for oxygen. Under two alternative California certification methods, the California predictive model and the vehicle emissions testing method, there is no minimum oxygen content requirement for summertime California Phase 2 gasoline.¹³ Under 40 CFR

⁸ "Fuels and Fuel Additives—Reformulated Gasoline Sold in California; Reid Vapor Pressure lower limit adjustment— Direct Final Rule," 61 FR 20736 (May 8, 1996).

⁹ "Fuels and Fuel Additives—Amendments to the Enforcement Exemptions for California Gasoline Refiners—Proposed Rule," 62 FR 18696 (April 16, 1997).

¹⁰ See 40 CFR 80.46(a), (e), (f) and (g) for Federal RFG test method requirements.

¹¹ EPA estimates that the portion of gasoline exported from California and used in neighboring states is about twelve percent of the total California gasoline production and imports.

¹² A copy of the letter has been placed in the public docket at the location listed in the ADDRESSES section. See also, 62 FR 18696 (April 16, 1997).

¹³ See Title 13, California Code of Regulations, section 2262.5 for the oxygen standards, section

80.81(e)(2), certain enforcement exemptions are withdrawn if a California refiner uses one of the alternative California certification methods, unless within 30 days of receiving the California certification it notifies EPA and demonstrates that its gasoline meets all Federal RFG per-gallon standards, including the 2.0 weight % oxygen standard.

Therefore, in order to retain the enforcement exemptions, 40 CFR 80.81(e)(2) required that all California Phase 2 gasoline produced by a refiner, regardless of whether it is sold in a Federal RFG area, meet the Federal RFG standard for oxygen content. Because neither of the two alternative California certification methods ensure that the Federal oxygen content standard will be met, except during designated winter months, a refiner that uses an alternative California certification method would have to provide notification and demonstrate to EPA that its gasoline meets the Federal RFG standard for oxygen content or lose its eligibility for certain Federal exemptions under 40 CFR 80.81. This loss of eligibility would apply even if the gasoline not meeting the Federal RFG standard for oxygen content is being distributed only to those areas of California that are not Federal RFG areas.

In its petition, WSPA asked EPA to amend the enforcement exemption provisions to allow California refiners to supply California Phase 2 gasoline containing less than 2.0 wt% oxygen to markets within California that are not Federal RFG areas without having to comply with the notification and demonstration requirements of 40 CFR 80.81(e)(2) and without losing the Federal enforcement exemptions. In its February 29, 1996 response to WSPA, EPA said it may be appropriate to amend 40 CFR 80.81, provided that annual gasoline quality surveys for oxygen content are conducted in each Federal RFG area, in order to ensure the gasoline sold there is in compliance with the Federal oxygen content standard.

Consistent with, and as described in, the February 29, 1996 letter, EPA proposed to amend 40 CFR 80.81 to allow refiners to produce California Phase 2 gasoline containing less than 2.0 wt% oxygen for use outside the Federal RFG areas in California, provided appropriate annual gasoline quality surveys for oxygen are conducted in each Federal RFG area in

California. These surveys must show an average oxygen content in each covered area of at least 2.0 wt%. While EPA could require that all gasoline batches being produced for the Federal RFG areas be tested for oxygen content at the refinery, or prior to importation as applicable, such testing would not ensure that all gasoline being sold in the Federal RFG areas contains at least 2.0 wt% oxygen.

As in the Federal RFG program areas outside of California, the compliance surveys appear to be the most practical method to assure that, on average, Federal RFG standards are met for each covered area. The Federal RFG program at 40 CFR 80.67 allows refiners, importers, and oxygenate blenders to meet certain Federal RFG standards on average, rather than on a per-gallon basis for each batch of gasoline. The requirement must then be met on average, over the entire production, without any averaging for each specific covered area to which the gasoline is distributed. The following paragraphs describe how the general RFG survey requirements (i.e. those surveys required by § 80.68 and applicable outside California) and how the more limited California oxygen surveys are designed. For general RFG surveys, the discussion here will focus on oxygen surveys.

C. General Survey Requirements

Refiners, importers and oxygenate blenders producing gasoline to meet the Federal RFG standards on average are allowed to produce some batches of gasoline that are less stringent than the averaging standards (within the limits of a per-gallon minimum or maximum standard, as applicable). But they must also produce some batches of gasoline that are more stringent than the averaging standards, such that on average, the applicable averaging standard is met. The averaging standards are somewhat more stringent than the per-gallon standard (e.g., the oxygen content averaging standard is 2.1 wt%, and the per-gallon standard is 2.0 wt%). It is expected that, if all refiners meet either the per-gallon standards or the averaging standards, the covered areas receiving their gasoline should achieve an average oxygen content no lower than would occur without the allowance for such averaging, based on the extensive fungible distribution system for gasoline products. Even though each refinery might meet its refinery gate standard for oxygen on average, there is a risk that some areas might actually receive RFG with relatively low oxygen content while others might receive RFG with relatively

high oxygen content. The surveys are designed to lessen this risk and ensure that all Federal RFG program areas at any given time receive RFG that meets the required oxygen standard.

More specifically, because many gasoline distribution systems are fungible, some uncertainty exists as to where each batch of gasoline from each supplier is ultimately distributed, and what batches, or portions of batches, from each supplier that each covered area actually receives. For example, under the averaging program, the possibility still exists that one or more covered areas may receive too many batches of RFG that have a relatively low oxygen content (e.g. greater than or equal to 1.5 wt%, but less than 2.0 wt%), so that the required oxygen levels will not have been achieved in that area.

Consequently, the Federal RFG program at 40 CFR 80.67 requires compliance surveys under 40 CFR 80.68 for refiners that elect to meet the standards on average under 40 CFR 80.41(b), (d) or (f), as applicable, rather than to meet the per-gallon standards for each batch of gasoline under 40 CFR 80.41(a), (c), or (e), as applicable. In general, the compliance surveys are to ensure that each covered area receives gasoline that cumulatively (from all suppliers and across time) has the same oxygen content it would have if averaging was not allowed. However, the Federal RFG regulations at 40 CFR 80.81(b)(1) exempted refiners of California gasoline (with respect to California gasoline) from the compliance survey provisions at 40 CFR 80.68, for the reasons described earlier.

D. Limited Oxygen Surveys for California

In response to the WSPA request concerning oxygen content requirements in California and the changes in California Phase 2 standards regarding oxygen content, EPA considered a limited application of the compliance survey provisions. EPA believes that a yearly series of oxygen surveys, similar to 40 CFR 80.68 surveys for averaging under the Federal RFG program, but limited in their scope, provides the most flexible alternative to refiners and the most assurance to EPA that complying gasoline is actually being sold in the Federal RFG areas.

In its February 29, 1996 response to WSPA, EPA decided to allow California refiners to produce gasoline that contains less than 2.0 wt% oxygen for use outside the Federal RFG areas, until today's amendments to the RFG requirements could be published in the **Federal Register** and become effective. In particular, EPA said it will not

2265 for the alternative predictive model method, and section 2266 for the alternative vehicle emission testing method.

enforce the requirement at 40 CFR 80.81(e)(2) that California refiners must demonstrate that Federal RFG per-gallon standards are met on each occasion California Phase 2 gasoline is certified under Title 13, California Code of Regulations, section 2265 (dealing with gasoline certification based on the California predictive model), provided that two conditions are met. The conditions are: first, a program of gasoline quality surveys must be conducted in each RFG covered area in California each year to monitor annual average oxygen content. Second, the surveys must be conducted in accordance with each requirement specified under 40 CFR 80.68(b) and (c), dealing with surveys for RFG quality, and 40 CFR 80.41(o) through (r), dealing with the effects of survey failures, except that the surveys need only evaluate for oxygen content and a minimum of four surveys (a survey series) must be conducted in each covered area each calendar year.

In its April 16, 1997 proposal, EPA announced its intention to retain the existing 30-day notification and demonstration provisions at 40 CFR 80.81(e)(2) as an option. EPA further proposed that the oxygen surveys conducted in California should not be considered for the purposes of determining the required number of surveys that must be conducted for compliance with the general survey provisions under the Federal RFG program at 40 CFR 80.68.¹⁴ A fixed number of surveys (i.e. a minimum of four per year) was proposed for California, consistent with the temporary enforcement position announced in the February 29, 1996 letter. As with the surveys required under 40 CFR 80.68 for Federal areas outside of California, EPA will determine when these optional surveys conducted in California under 40 CFR 80.81(e)(2) shall be conducted.

The February 29, 1996 letter to WSPA did not address the consequences of passing and failing an optional survey series in a Federal RFG area in California under 40 CFR 80.81(e)(2). The April 16, 1997 document proposed that, for the limited oxygen survey option included in today's rule, failing a survey would result in a "ratcheting" of (i.e., increasing) the minimum oxygen content standard, for each gallon of averaged gasoline, by an additional 0.1%. Only one year of passing the

survey series in a covered area will be needed to initiate relaxation of the minimum oxygen content standard for the following year. EPA proposed that the minimum oxygen content standard be relaxed by 0.1 wt% for each year following a year in which the survey series passes in a Federal RFG area in California. However, EPA will not allow the minimum oxygen content standard to be less than 1.5 wt%, the minimum oxygen content standard for Federal RFG under averaging. As with failures of survey series required under 40 CFR 80.68 in Federal RFG areas outside of California in accordance with 40 CFR 80.41(q)(4), adjusted standards under the compliance survey option of 40 CFR 80.81(e)(2) apply to all averaged gasoline produced by a refiner for use in any Federal RFG area.

The procedures and consequences of the oxygen surveys set forth in the April 16, 1997 notice or proposed rulemaking differed somewhat from the general survey consequences under 40 CFR 80.68, because surveys applicable in California are much smaller in scope. EPA proposed that the ultimate consequence of multiple failures of the optional compliance surveys be withdrawal of the survey option, rather than the effective withdrawal of the averaging option, as with the required compliance surveys conducted under 40 CFR 80.68 for Federal RFG areas outside of California. EPA proposed this consequence because the compliance survey option provides refiners of California gasoline additional flexibility under the Federal exemption provisions, conditioned on the premise that those refiners will control the oxygen content of the gasoline being distributed to the Federal RFG areas within California. If the refiners do not control the oxygen content of the gasoline going to those areas as determined by the results of the surveys, EPA believes that it may be reasonable to remove the flexibility provided under this option. Consequently, if EPA proposed that a failure of a survey series in one Federal RFG area in California for three consecutive years occurs, or an equivalent "net" failure of three years over any number of years (i.e., number of years the survey series failed subtracted from the number of years the survey series passed), the compliance survey option will no longer be applicable for any Federal RFG area in California. In practice, this situation will occur if a survey series fails for a covered area in a year in which the minimum oxygen content standard had been raised to 1.7 wt% due to a survey

series failure in that covered area the previous year.

It is important to realize that successive oxygen survey failures might be an indication of the inability or unwillingness of California refiners to meet RFG standards. As such, EPA noted in the April 16, 1997 notice of proposed rulemaking that future rulemaking to remove some or all California enforcement exemptions might be appropriate. If a survey does not occur, then all refiners electing to use an alternative certification method must follow the notification requirements at § 80.81(e)(2)(i), including the requirement to demonstrate that all their gasoline meets each of the complex model standards listed in § 80.41(c). Furthermore, in accordance with § 80.81(e)(2)(i), the California enforcement exemptions will not apply to a refiner who chooses an alternative certification method, but fails to meet these notification and demonstration requirements.

Consistent with the existing compliance survey requirements for Federal RFG areas outside of California, EPA proposed to allow the optional compliance survey under 40 CFR 80.81(e)(2) to be conducted either by individual refiners under 40 CFR 80.68(a) or as a group of refiners under 40 CFR 80.68(b).¹⁵ The temporary enforcement position announced by the February 29, 1996 response to WSPA omitted the individual survey option of 40 CFR 80.68(a), because that survey option is not currently being used and is not expected to be used for practical reasons. The consequences of any survey failure will apply to all suppliers¹⁶ who comply on an averaging basis and who serve the failed area.

Consistent with the existing RFG regulations at 40 CFR part 80, the February 29, 1996 letter to WSPA, and the April 16, 1997 notice of proposed rulemaking, California Phase 2 gasoline that does not meet the Federal RFG standards, including the oxygen standard, is classified under the Federal regulations as conventional gasoline. In addition, today's amendments do not alter the prohibitions under section

¹⁵ Refiners, importers, and blenders have formed a survey association which funds the survey program. In accordance with § 80.68(c)(13), the survey program is administered by an independent surveyor.

¹⁶ There is an exception for "low volume" parties under 40 CFR 80.41(q)(iii). Specifically, if a refiner or oxygenate blender is able to show that the volume of RFG supplied to a covered area is less than one percent of the RFG produced at its refinery or oxygenate blending facility during the failed year, or 100,000 barrels, whichever is less, he may be exempt from the more stringent standards.

¹⁴ Under 40 CFR 80.68(b), the required number of compliance surveys required in a year for Federal RFG areas outside of California depends partly on the number of areas required to be surveyed in the year, the number of surveys conducted the previous year, and the survey results from the previous year.

211(k)(5) of the Clean Air Act, and 40 CFR 80.78(a)(1) against selling or dispensing conventional gasoline to ultimate consumers in Federal RFG areas, and against selling conventional gasoline for resale in Federal RFG areas unless the gasoline is segregated and marked as "conventional gasoline, not for sale to ultimate consumers in a covered area." Nothing in today's action would change the requirement that refiners and importers in California meet all other Federal RFG standards, including the oxygen standard, for gasoline produced or imported for use in Federal RFG covered areas in California. These standards must be met separately for each refinery and by each importer.

The amendments to 40 CFR 80.81 as set forth in today's notice are consistent with the February 29, 1996 letter to WSPA and the April 16, 1997 notice of proposed rulemaking. Comments related to this provision are summarized in section IV, "Response to Comments," below.

E. Correction to § 80.81(e)(1)

EPA proposed to correct 40 CFR 80.81(e)(1), which erroneously omits one provision, paragraph (f), from the list of enforcement exemption provisions that would not apply under the conditions of paragraphs (e)(2) or (e)(3). Paragraph (e)(2) specifies that the exemption provisions listed in paragraph (e)(1) do not apply if a refiner certifies California gasoline under one of the alternative California certification procedures, unless the refiner notifies EPA of that alternative certification and demonstrates to EPA that its gasoline meets all Federal per-gallon standards. (Today's rule adds a compliance survey option to paragraph (e)(2)(ii).) Paragraph (e)(3) specifies that the exemption provisions listed in paragraph (e)(1) do not apply in the case of a refiner of California gasoline that has been assessed a civil, criminal or administrative penalty for certain violations of Federal or California regulations, except upon a showing of good cause.

Paragraph (f) specifies that for California phase 2 gasoline (California gasoline that is sold or made available for sale after March 1, 1996) the following Federal RFG enforcement requirements are waived: the oxygenated fuels provisions of § 80.78(a)(1)(iii), the product transfer provisions of § 80.78(a)(1)(iv), the oxygenate blending provisions contained in § 80.78(a)(7), and the segregation of simple and complex model certified gasoline provision of § 80.78(a)(9). Under the conditions of

either paragraph (e)(2) or (e)(3), EPA would need those enforcement provisions to ensure that gasoline being used in Federal RFG areas in California complies with the Federal standards. Therefore, EPA proposed to amend paragraph 40 CFR 80.81(e)(1) to include paragraph (f) in the list of enforcement exemptions that would become inapplicable under the conditions of paragraphs (e)(2) or (e)(3). No comments were received on this aspect of the April 16, 1997 proposal and the proposed corrections are finalized in today's rule.

F. Sampling and Testing Requirements for California Refiners

Under 40 CFR 80.65(e)(1), a refiner must determine the properties of each batch of RFG it produces prior to the gasoline leaving the refinery.¹⁷ Under the California RFG program, refiners may obtain approval to sample and test gasoline for compliance with California RFG standards at off-site "production" tankage. This approval would have to be obtained under Title 13, section 2260(a)(28) of the California Code of Regulations, which states:

(28) "Production facility" means a facility in California at which gasoline or CARBOB is produced. Upon request of a producer, the executive officer [of CARB] may designate, as part of the producer's production facility, a physically separate bulk storage facility which (A) is owned or leased by the producer, and (B) is operated by or at the direction of the producer, and (C) is not used to store or distribute gasoline or CARBOB that is not supplied from the production facility."

It is EPA's understanding that the third requirement, (C), is interpreted by CARB to require that the gasoline must be transported to the off-site tankage via a dedicated pipeline.

On April 16, 1997, EPA proposed amendments to 40 CFR 80.81(h), which would allow California refiners who have obtained approval from the State of California to conduct sampling and testing at off-site tankage served by a dedicated pipeline to use this approach under the Federal RFG program as well. Specifically, EPA proposed to allow a California refiner who has obtained approval from the State of California to conduct sampling and testing at off-site tankage under California Code of Regulations Title 13, section 2260(a)(28), to conduct sampling and testing at such approved off-site tankage for purposes of the Federal RFG program. The gasoline must be sampled and tested under the terms of a current, valid protocol agreement between the

refiner and CARB. The refiner must provide a copy of the current, valid protocol agreement specifying the off-site tankage as part of the production facility, to the EPA Administrator or the Administrator's designated agent, upon request. No comments were received on this issue and the sampling and testing provisions are finalized in today's rule as proposed.

IV. Response to Comments

A. Consequences of Successive Survey Failures

As discussed above, EPA proposed that successive survey failures for three years, or an equivalent "net" failures of three years over any number of years (i.e. number of years the survey series failed subtracted from the number of years the survey series passed), would result in the elimination of the survey option. Elimination of the survey option would mean that all California gasoline of each refiner, including gasoline certified under an alternative certification method and sold in non-RFG cities, would have to meet Federal oxygen standards. Each refiner certifying under an alternative certification would have no option but compliance with the notification and demonstration requirements at 40 CFR 80.81(e)(1).

If successive oxygen survey failures were to occur, EPA would be forced to consider whether some or all of the California enforcement exemptions in 40 CFR 80.81 should be revoked via rulemaking. Successive survey failures might well indicate a widespread problem with the quality of California gasoline and may call into question the equivalency of such gasoline with respect to Federal Phase I RFG. Such a revocation would apply to all California refiners, importers, and blenders.

One commenter disagreed and stated that the result of successive survey failures should not be removal of the survey option and the possible revocation of some or all of the California enforcement exemptions. Rather, the commenter believes that the result of successive survey failures should be the requirement that all gasoline in Federal RFG areas meet the per-gallon 2.0 weight % minimum.

EPA disagrees with the commenter. Today's rule, which matches the proposal, is designed to add a flexibility—i.e., the flexibility to utilize a survey option and produce gasoline not meeting Federal oxygen standards in non-Federally covered areas—where such flexibility did not exist before. Nothing in today's action alters the

¹⁷ Under 40 CFR 80.2 (h), a "refinery" is "a plant where gasoline or diesel fuel is produced."

applicability of Federal standards in RFG areas in California. Specifically, each gallon of gasoline in RFG areas was, and is, required to meet a 2.0 weight % minimum for parties complying on a per gallon basis. Each gallon of gasoline for an averaging party is required to meet a minimum of 1.5 weight %. All gallons produced by an averaging refiner during a given compliance period must average to 2.1 weight%. Since Federal oxygen standards continue to apply in RFG areas, the consequence for survey failure suggested by the commenter, in fact, amounts to no consequence at all.

As discussed above and in the April 16, 1997 proposal, successive or excessive survey failures would raise serious concerns about the expected equivalency between Federal Phase I RFG and California Phase 2 gasoline sold in Federally covered areas. EPA would need to assess the impact of these failures, should they occur, on the program, and would initiate a notice-and-comment rulemaking procedure, if such action is in the public interest.

B. Use of GC/FTIR Method (ASTM 5986)

EPA proposed that California gasoline refiners, importers, and blenders be permitted to substitute California-approved analytical techniques or test methods for Federal test methods when producing gasoline used in California and for conventional gasoline used outside of California. California test methods could not be utilized for gasoline intended for "export" to markets in states outside California as Federal RFG.

One commenter stated that EPA should allow all refiners the option of using the GC/FTIR method (ASTM 5986) for aromatics, benzene, and oxygen content, independent of this rulemaking. Further, the commenter urges EPA to allow the use of California gasoline sold within the state or exported as conventional, but for all RFG that is produced by California refiners for the purpose of exportation to other states as Federal Phase I RFG. At this time, EPA does not believe that adoption of California test methods for Federal RFG destined to be sold outside California is appropriate without further study. Therefore, gasoline produced by California refiners for the purpose of exportation to other states as Federal RFG remains subject to the Federal test methods. However, EPA intends to fully consider the larger issue of RFG test methods as part of a separate action related to performance-based test methods.

V. Statutory Authority

Sections 114, 211 and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

VI. Environmental Impact

This rule is expected to have no negative environmental impact. These amendments are intended to eliminate duplicative enforcement requirements, and do not relax the Federal standards. The additional testing flexibility allowed certain refiners of California gasoline under today's regulation may, in fact, result in an environmental benefit because it would give California refiners flexibility to sell gasoline meeting California Phase 2 standards as Federal conventional gasoline in other areas. It is reasonable to expect that such gasoline would be "cleaner" than other conventional gasoline and could result in an environmental benefit to the areas receiving it.

VII. Economic Impact and Impact on Small Entities

EPA has determined that this final rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Today's regulation would have a positive economic impact on the great majority of entities regulated by the RFG regulation, including small businesses. Specifically, it give refiners of California gasoline additional operational flexibility and is not expected to result in any additional compliance costs for regulated parties, including small entities. A regulatory flexibility analysis has therefore not been prepared.

VIII. Executive Order 12866

Under Executive Order 12866,¹⁸ the Agency must determine whether a regulation is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.¹⁹

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

IX. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Pub. L. 104-4, EPA must prepare a budgetary impact statement to accompany any general notice of proposed rulemaking or final rule that includes a Federal mandate which may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of \$100 million or more. Under section 205, for any rule subject to section 202 EPA generally must select the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Under section 203, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must take steps to inform and advise small governments of the requirements and enable them to provide input.

EPA has determined that this rule does not include a Federal mandate as defined in UMRA. The rule does not include a Federal mandate that may result in estimated annual costs to State, local or tribal governments in the aggregate, or to the private sector, of \$100 million or more, and it does not establish regulatory requirements that may significantly or uniquely affect small governments.

X. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in

¹⁸ 58 FR 51736 (October 4, 1993).

¹⁹ *Id.* at section 3(f)(1)-(4).

the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

XI. Children's Health Protection

This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 80

Environmental protection, California exemptions, Fuel additives, Gasoline, Reformulated gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 17, 1998.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, 40 CFR Part 80 is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

2. Section 80.81 is amended by revising paragraphs (e)(1), (e)(2) and (h) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(e)(1) The exemption provisions contained in paragraphs (b)(2), (b)(3), (c), and (f) of this section shall not apply under the circumstances set forth in paragraphs (e)(2) and (e)(3) of this section.

(2) Such exemption provisions shall not apply to any refiner, importer, or oxygenate blender of California gasoline with regards to any gasoline formulation that it produces or imports is certified under Title 13, California Code of Regulations, section 2265 or section 2266 (as amended July 2, 1996), unless:

(i) *Written notification option.* (A) The refiner, importer, or oxygenate blender, within 30 days of the issuance of such certification:

(1) Notifies the Administrator of such certification;

(2) Submits to the Administrator copies of the applicable certification order issued by the State of California and the application for certification submitted by the regulated party to the State of California; and

(3) Submits to the Administrator a written demonstration that all gasoline formulations produced, imported or blended by the refiner, importer or oxygenate blender for use in California meets each of the complex model per-gallon standards specified in § 80.41(c).

(B) If the Administrator determines that the written demonstration submitted under paragraph (e)(2)(i)(A) of this section does not demonstrate that all certified gasoline formulations meet each of the complex model per-gallon standards specified in § 80.41(c), the Administrator shall provide notice to the party (by first class mail) of such determination and of the date on which the exemption provisions specified in paragraph (e)(1) of this section shall no longer be applicable, which date shall be no earlier than 90 days after the date of the Administrator's notification.

(ii) *Compliance survey option.* The compliance survey requirements of § 80.68 are met for each covered area in California for which the refiner, importer or oxygenate blender supplies gasoline for use in the covered area, except that:

(A) The survey series must determine compliance only with the oxygen content standard of 2.0 weight-percent;

(B) The survey series must consist of at least four surveys a year for each covered area;

(C) The surveys shall not be included in determining the number of surveys under § 80.68(b)(2);

(D) In the event a survey series conducted under this paragraph (e)(2)(ii) fails in accordance with § 80.68(c)(12), the provisions of §§ 80.41(o), (p) and (q) are applicable, except that if the survey series failure occurs in a year in which the applicable minimum oxygen content is 1.7 weight percent, the compliance survey option of this section shall not be applicable for any future year; and

(E) Notwithstanding § 80.41(o), in the event a covered area passes the oxygen content series in a year, the minimum oxygen content standard for that covered area beginning in the year following the passed survey series shall be made less stringent by decreasing the minimum oxygen content standard by 0.1%, except that in no case shall the minimum oxygen content standard be less than that specified in § 80.41(d).

* * * * *

(h)(1) For the purposes of the batch sampling and analysis requirements contained in § 80.65(e)(1) and § 80.101(i)(1)(i)(A), any refiner, importer or oxygenate blender of California gasoline may use a sampling and/or analysis methodology prescribed in

Title 13, California Code of Regulations, sections 2260 *et seq.* (as amended July 2, 1996), in lieu of any applicable methodology specified in § 80.46, with regards to

(i) Such gasoline; or
(ii) That portion of its gasoline produced or imported for use in other areas of the United States, provided that:

(A) The gasoline must be produced by a refinery that is located in the state of California that produces California gasoline, or imported into California from outside the United States as California Phase 2 gasoline;

(B) The gasoline must be classified as conventional gasoline upon exportation from the California; and

(C) The refiner or importer must correlate the results from the applicable sampling and /or analysis methodology prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.* (as amended July 2, 1996), with the method specified at § 80.46, and such correlation must be adequately demonstrated to EPA upon request.

(2) Notwithstanding the requirements of § 80.65(e)(1) regarding when the properties of a batch of reformulated gasoline must be determined, a refiner of California gasoline may determine the properties of gasoline as specified under § 80.65(e)(1) at off site tankage provided that:

(i) The samples are properly collected under the terms of a current and valid protocol agreement between the refiner and the California Air Resources Board with regard to sampling at the off site tankage and consistent with requirements prescribed in Title 13, California Code of Regulations, sections 2260 *et seq.* (as amended July 2, 1996); and

(ii) The refiner provides a copy of the protocol agreement to EPA upon request.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185, and 186

[OPP-300638; FRL-5783-6]

RIN 2070-AB78

Recodification of Certain Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.