

(B) The retailer or wholesale purchaser-consumer will be deemed in compliance with the VOC minimum standard where the retailer or wholesale purchaser-consumer draws the tank down as low as practicable before receiving product of the other type into the tank and receives only product of the other type into the tank during the ten-day period. Under this option, the retailer or wholesale purchaser-consumer is not required to test the gasoline at the end of the ten-day period.

(iv) Nothing in paragraphs (a)(8)(ii) or (iii) of this section shall preempt existing State laws or regulations regulating the combining of ethanol-blended reformulated gasoline with non-ethanol-blended reformulated gasoline or prohibit a State from adopting such laws or regulations in the future.

* * * * *

(11) * * *

(iv) * * *

(D) Paragraphs (a)(11)(iv)(A) and (C) of this section do not apply to gasoline subject to the provisions in § 80.81.

* * * * *

■ 4. Section 80.79 is amended by adding paragraph (a)(5) and adding a sentence at the end of paragraph (c)(1), to read as follows:

§ 80.79 Liability for violations of the prohibited activities.

(a) * * *

(5) Notwithstanding the provisions in paragraphs (a)(1) through (a)(4) of this section, for gasoline subject to the provisions in § 80.81:

(i) Only a retailer or wholesale purchaser-consumer shall be deemed in violation for combining gasolines in a manner that is inconsistent with § 80.78(a)(8)(ii) or (iii), or for gasoline which does not comply with the VOC minimum standard under § 80.41 after the retailer or wholesale purchaser-consumer combines or causes the combining of compliant gasolines in a manner inconsistent with § 80.78(a)(8)(ii) or (iii);

(ii) No person shall be deemed in violation for gasoline which does not comply with the VOC minimum standard under § 80.41 where the non-compliance is solely due to the combining of compliant gasolines by a retailer or wholesale purchaser-consumer in a manner that is consistent with § 80.78(a)(8)(ii) and (iii).

* * * * *

(c) * * *

(1) * * * For gasoline subject to the provisions in § 80.81, a party is not required to conduct periodic sampling

and testing to determine compliance with the oxygen minimum standard.

* * * * *

■ 5. Section 80.81 is amended by revising paragraphs (d), (e)(3), and (h)(1) introductory text, and removing and reserving paragraph (e)(2) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(d) Any refiner or importer that produces or imports gasoline that is sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to March 1, 1996, shall demonstrate compliance with the standards specified in §§ 80.41 and 80.90 by excluding the volume and properties of such gasoline from all conventional gasoline and reformulated gasoline that it produces or imports that is not sold, intended for sale, or made available for sale as a motor vehicle fuel in the State of California subsequent to such date. The exemption provided in this section does not exempt any refiner or importer from demonstrating compliance with such standards for all gasoline that it produces or imports.

(e) * * *

(2) [Reserved]

(3)(i) Such exemption provisions shall not apply to any refiner or importer of California gasoline who has been assessed a civil, criminal or administrative penalty for a violation of subpart D, E or F of this part or for a violation of the California Phase 2 reformulated gasoline regulations set forth in Title 13, California Code of Regulations, sections 2260 *et seq.*, effective 90 days after the date of final agency or district court adjudication of such penalty assessment.

(ii) Any refiner or importer subject to the provisions of paragraph (e)(3)(i) of this section may submit a petition to the Administrator for relief, in whole or in part, from the applicability of such provisions, for good cause. Good cause may include a showing that the violation for which a penalty was assessed was not a substantial violation of the Federal California reformulated gasoline regulations.

* * * * *

(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 or importer of California gasoline may use a sampling and/or analysis methodology prescribed in Title 13, California Code of Regulations, section 2260 *et seq.* (as amended July 2, 1996), in lieu of any

applicable methodology specified in § 80.46, with regards to:

* * * * *

[FR Doc. 06-1613 Filed 2-21-06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-OAR-2005-0170; FRL-8035-1]

Regulation of Fuels and Fuel Additives: Removal of Reformulated Gasoline Oxygen Content Requirement and Revision of Commingling Prohibition To Address Non-Oxygenated Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In the Energy Policy Act of 2005 (Energy Act), Congress removed the oxygen content requirement for reformulated gasoline (RFG) in section 211(k) of the Clean Air Act (CAA). To be consistent with the current CAA section 211(k), this direct final rule amends the fuels regulations to remove the oxygen content requirement for RFG. This rule also removes requirements which were included in the regulations to implement and ensure compliance with the oxygen content requirement. In addition, this rule extends the current prohibition against combining VOC-controlled RFG blended with ethanol with VOC-controlled RFG blended with any other type of oxygenate from January 1 through September 15, to also prohibit combining VOC-controlled RFG blended with ethanol with non-oxygenated VOC-controlled RFG during that time period, except in limited circumstances authorized by the Act.

DATES: This rule is effective on May 5, 2006, or April 24, 2006, whichever is later, without further notice unless we receive adverse comment by March 24, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the final rule on which adverse comment was received will not take effect. Those portions of the rule on which adverse comment was not received will go into effect on the effective date noted above.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2005-0170 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: Group A-AND-R-DOCKET@epa.gov. Attention Docket ID No. OAR-2005-0170.

4. Mail: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW., Washington, DC 20503.

5. Hand Delivery: EPA Docket Center, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2005-0170. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any

disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

We are only taking comment on issues related to the removal of the oxygen requirement for RFG and associated compliance requirements, and the provisions regarding the combining of ethanol blended RFG with non-oxygenated RFG and provisions for retailers regarding the combining of ethanol blended RFG with non-ethanol blended RFG. Comments on any other issues or provisions in the RFG regulations are beyond the scope of this rulemaking.

Docket: All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air and Radiation Docket is (202) 566-1742.

FOR FURTHER INFORMATION CONTACT:

Marilyn Bennett, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone

number: (202) 343-9624; fax number: (202) 343-2803; e-mail address: mbennett@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because we view this action to be noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final Rule if adverse comments are filed. This rule is effective on May 5, 2006, or April 24, 2006, whichever is later, without further notice unless we receive adverse comment by March 24, 2006. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the portion of the rule on which adverse comment was received will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rule for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

EPA is also publishing today a direct final rule that removes the oxygen content requirement for RFG, and makes associated changes in the fuels regulations, for California only. Although the California rule is similar in effect to this one, it has an earlier effective date.

I. General Information

A. Does This Action Apply To Me?

Entities potentially affected by this action include those involved with the production and importation of conventional gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated parties
Industry	324110	2911	Petroleum Refiners, Importers.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

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 your entity is regulated by this action, you should carefully examine the applicability criteria of part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked

will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

C. Outline of This Preamble

- I. General Information
- II. Removal of the RFG Oxygen Content Requirement
- III. Combining Ethanol Blended RFG With Non-Ethanol Blended RFG
- IV. Environmental Effects of This Action
- V. Statutory and Executive Order Reviews
- VI. Statutory Provisions and Legal Authority

II. Removal of the RFG Oxygen Content Requirement

Section 211(k) of the 1990 Amendments to the CAA required reformulated gasoline (RFG) to contain oxygen in an amount that equals or exceeds 2.0 weight percent. CAA section 211(k)(2)(B). Accordingly, EPA's current regulations require RFG refiners, importers and oxygenate blenders to meet a 2.0 or greater weight percent oxygen content standard. 40 CFR 80.41. Recently, Congress passed legislation which amended section 211(k) of the CAA to remove the RFG oxygen requirement.¹ To be consistent with the current CAA section 211(k), today's rule modifies the RFG regulations to remove the oxygen standard in § 80.41.²

Today's rule also modifies several other sections of the RFG regulations which contain provisions designed to implement and ensure compliance with the oxygen standard. The modifications to the affected sections are listed in the following table:

§ 80.2(ii)	Removes oxygen in the definition of "reformulated gasoline credit." With the removal of the oxygen standard, there is no basis for the generation of oxygen credits.
§§ 80.41(e) and (f)	Removes the per-gallon and averaged oxygen standards for Phase II Complex Model RFG ³
§ 80.41(o)	Removes the provisions relating to oxygen survey failures. With the removal of the oxygen standard, oxygen surveys will no longer be needed.
§ 80.41(q)	Removes reference to § 80.41(o). Also removes reference to oxygenate blenders since oxygenate blenders were subject only to adjusted standards in the case of an oxygen survey failure and not any other survey failure.
§ 80.65 heading	Removes oxygenate blenders from the heading since oxygenate blenders were only responsible for demonstrating compliance with the oxygen standard which has been removed.
§ 80.65(c)	Removes requirements relating to compliance with the oxygen standard which have been removed.
§ 80.65(d)	Removes the designation requirement relating to oxygen content, removes the RBOB designation categories of "any oxygenate" and "ether only," and adds a requirement for RBOB to be designated regarding the type and amount of oxygenate required to be added.
§ 80.65(h)	Removes the requirement for oxygenate blenders to comply with the audit requirements under subpart F since they will no longer be required to demonstrate compliance with the oxygen standard.
§ 80.67(a)	Removes the option to comply with the oxygen standard on average for oxygenate blenders since there no longer is an oxygen standard. Also removes provisions for refiners and importers to use gasoline that exceeds the average standard for oxygen to offset gasoline which does not achieve the average standard for oxygen.
§ 80.67(b)	Removes requirements relating to oxygenate blenders who meet the oxygen standard on average since there no longer is an oxygen standard.
§ 80.67(f)	Removes requirements relating to compliance with the oxygen standard on average since there no longer is an oxygen standard.
§ 80.67(g)	Removes requirements relating to compliance calculations for meeting the oxygen standard on average, since there no longer is an oxygen standard. Also removes requirements relating to the generation and use of oxygen credits.
§ 80.67(h)	Removes requirements relating to the transfer of oxygen credits.

¹ Energy Policy Act of 2005, Public Law No. 109–58 (HR6), section 1504(a), 119 STAT 594, 1076–1077(2005).

² The RFG regulations were promulgated under authority of CAA section 211(c) as well as CAA section 211(k). The regulations were adopted under

section 211(c) primarily for the purpose of applying the preemption provisions in section 211(c)(4). See 59 FR 7809 (February 16, 1994.)

§ 80.68(a) and (b)	Removes references to oxygenate blenders since, with the removal of the requirement for oxygen survey, they are no longer subject to survey requirements. Also removes reference to oxygen regarding consequences of a failure to conduct a required survey.
§ 80.68(c)	Removes general survey requirements relating to oxygen surveys.
§ 80.73	Clarifies the applicability of this section to oxygenate blenders.
§ 80.74(c)	Removes recordkeeping requirements for oxygenate blenders who comply with the oxygen standard on average, since they no longer will be required to demonstrate compliance with an oxygen standard. Also removes reference to “types” of credits, since there now is only one type of credit (<i>i.e.</i> , benzene.)
§ 80.74(d)	Revises this paragraph to clarify recordkeeping requirements for oxygenate blenders.
§ 80.75 heading and paragraph (a)	Removes reporting requirements for oxygenate blenders since they no longer will be required to demonstrate compliance with an oxygen standard.
§ 80.75(f)	Removes requirement for submitting oxygen averaging reports since there no longer is a requirement to comply with the oxygen standard.
§ 80.75(h)	Removes credit transfer report requirements for oxygen credits, since oxygen credits will no longer be generated.
§ 80.75(i)	Removes requirement for oxygenate blenders to submit a report identifying each covered area that was supplied with averaged RFG, since they no longer will be required to demonstrate compliance with an oxygen standard.
§ 80.75(l)	Removes reporting requirement for oxygenate blenders who comply with the oxygen standard on a per-gallon basis, since they are no longer required to demonstrate compliance with an oxygen standard.
§ 80.75(m)	Removes requirement for oxygenate blenders to submit a report of the audit required under § 80.65(h), since oxygenate blenders will no longer be required to comply with the audit requirement.
§ 80.75(n)	Removes requirement for oxygenate blenders to have reports signed and certified, since they no longer will be required to submit reports under this section.
§ 80.76(a)	Clarifies registration requirements for oxygenate blenders.
§ 80.77(g)	Removes product transfer documentation requirement for oxygen content.
§ 80.77(i)	Removes requirement for RBOB to be identified on product transfer documents as suitable for blending with “any-oxygenate,” “ether-only,” since these categories have been removed.
§ 80.78(a)	Removes the prohibition against producing and marketing RFG that does not meet the oxygen minimum standard since the oxygen standard has been removed. Also removes requirements to meet the oxygen minimum standard during transition from RBOB to RFG in a storage tank. (Today’s rule also removes the provision in § 80.78(a)(1) regarding compliance with the maximum oxygen standard in § 80.41 for simple model RFG. See footnote 3.)
§ 80.79	Removes quality assurance requirement to test for compliance with the oxygen standard.
§ 80.81(b)	Removes exemptions for California gasoline survey and independent analysis requirements for oxygenate blenders since they are no longer subject to these requirements.
§ 80.125(a), (c) and (d)	Removes attest engagement auditor requirements for oxygenate blenders, since they are no longer required to conduct attest engagement audits.
§ 80.126(b)	Revises attest engagement definition of credit trading records to remove reference to oxygen credits.
§ 80.128(e)	Removes reference to RBOB designations of “any-oxygenate” and “ether-only” with regard to refiner and importer contracts with downstream oxygenate blenders, since these designations have been removed from the regulations.
§ 80.129	Removes and reserves this section which provided for alternative attest engagement procedures for oxygenate blenders, since they are no longer required to conduct attest audits.
§ 80.130(a)	Removes requirement for a certified public accountant or an internal auditor certified by the Institute of Internal Auditors, Inc. to issue an attest engagement report to blenders, since they are no longer required to conduct attest audits. Removes requirement for blenders to provide a copy of the auditor’s report to EPA.
§ 80.133(h)	Removes references to “any-oxygenate” and “ether-only” RBOB under § 80.69(a)(8) since this section has been removed.
§ 80.134	Removes this section which provides attest procedures for oxygenate blenders since they are no longer required to conduct attest audits.

Today’s rule also modifies the provisions for downstream oxygenate blending in § 80.69. Under the current regulations, some refiners and importers produce or import a product called “reformulated gasoline blendstock for oxygenate blending,” or RBOB, which is

gasoline that becomes RFG upon the addition of an oxygenate. The refiner or importer of the RBOB determines the type(s) and amount (or range of amounts) of oxygenate that must be added to the RBOB. The RBOB is then transported to an oxygenate blender downstream from the refiner or importer who adds the type and amount of oxygenate designated for the RBOB by the refiner or importer. The RBOB refiner or importer includes the designated amount of oxygenate in its emissions performance compliance calculations for the RBOB, however, it is the oxygenate blender who actually adds the oxygenate to the RBOB to

comply with the 2.0 weight percent oxygen standard for the RFG that is produced by blending oxygenate into the RBOB. The regulations require oxygenate blenders to conduct testing for oxygen content to ensure that each batch of RFG complies with the oxygen standard. With the removal of the oxygen standard, the current requirement for oxygenate blenders to conduct testing to ensure compliance with the oxygen standard will no longer be necessary. Accordingly, the provisions for oxygenate blenders in § 80.69 have been modified to remove the requirement for oxygenate blenders

³ The regulations also include oxygen minimum standards for simple model RFG and Phase I complex Model RFG, and an oxygen maximum standard for simple model RFG. See §§ 80.41(a) through (d), and (g). These standards are no longer in effect and today’s rule does not modify the regulations to remove these standards or compliance requirements relating to these standards, except where such requirements are included in provisions requiring other changes in today’s rule.

to test RFG for compliance with the oxygen standard.

Although there will no longer be an oxygen content requirement for RFG, we believe that many refiners and importers will want to continue to include oxygenate blended downstream in their emissions performance compliance calculations. As a result, the category of RBOB is being retained and RBOB refiners and importers will be required to comply with the contract and quality assurance (QA) oversight requirements in § 80.69 for any RBOB produced or imported.⁴

Under the current regulations, RBOB refiners and importers are required to have a contract with the downstream oxygenate blender and conduct QA oversight testing of the oxygenate blending operation to ensure that the proper type and amount of oxygenate is added downstream. § 80.69(a)(6) and (7). The regulations also provide that, in lieu of complying with these requirements, a refiner or importer may designate one of two generic categories of oxygenates to be added to the RBOB, and assume for purposes of its emissions compliance calculations that the minimum amount of oxygenate needed to result in RFG containing 2.0 weight percent oxygen will be added downstream. § 80.69(a)(8). RBOB refiner or importer compliance with the contract and oversight requirements is not required in this situation because, as discussed above, the oxygenate blender has been required to meet the 2.0 weight percent oxygen standard and conduct testing designed to ensure that each batch of RFG complies with the oxygen standard.⁵ Where an RBOB refiner or importer wishes to include a larger amount of oxygenate in its compliance calculations (i.e., an amount that would result in RFG containing more than 2.0 weight percent oxygen), the refiner or importer must comply with the contract and oversight requirements in § 80.69(a)(6) and (7) to ensure that the

proper type and amount of oxygenate is added.

Because oxygenate blenders will no longer be conducting testing to ensure compliance with the oxygen standard, we believe that RBOB refiner or importer compliance with the contract and QA oversight requirements will be necessary for RBOB designated to be blended with any amount of oxygenate, including an amount of oxygenate that would result in RFG containing 2.0 weight percent (or less) oxygen. As a result, today's rule requires RBOB refiners and importers to comply with the contract and QA oversight requirements in § 80.69 for any RBOB produced or imported. This approach is consistent with the oversight requirements in § 80.101(d)(4) for refiners and importers of conventional gasoline who wish to include oxygen added downstream from the refinery or importer in anti-dumping emissions compliance calculations.

Although oxygenate blenders will no longer be subject to the oxygen standard and associated testing requirements, we believe that the current requirements for oxygenate blenders to be registered with EPA, to add the specific type(s) and amount (or range of amounts) of oxygenate designated for the RBOB, and to maintain records of their blending operation continue to be necessary in order to ensure compliance with, and facilitate enforcement of, the emissions performance standards for the RFG produced by blending oxygenate with RBOB downstream. As a result, these oxygenate blender requirements are being retained.

The effective date for the removal of the oxygen requirement will occur during 2006.⁶ As a result, refiners, importers and oxygenate blenders will be subject to the oxygen standard for the months in 2006 prior to the effective date of this rule. The current regulations allow parties to demonstrate compliance either on a per-gallon basis or on an annual average basis. Parties wishing to base their compliance on the per-gallon requirements, may formulate and sell RFG without oxygen after the effective date of the rule. EPA will interpret its regulations regarding annual average as follows. Parties may demonstrate compliance based on the average oxygen content of RFG during the months prior to the effective date for the removal of the oxygen content requirement. In addition, any refiner, importer or oxygenate blender who is unable to meet the annual average oxygen

standard in 2006 based on the months prior to the effective date for the removal of the oxygen content standard may include all of the oxygenated RFG it produces or imports during 2006 in its annual average compliance calculations.

III. Combining Ethanol Blended RFG With Non-Ethanol Blended RFG

As discussed above, section 211(k) required RFG to contain a minimum of 2.0 weight percent oxygen, and the current fuels regulations reflect this requirement. Refiners, importers and oxygenate blenders have used different oxygenates to meet this requirement. RFG that contains ethanol must be specially blended to account for the RVP "boost" that ethanol provides, and the consequent possibility of increased VOC emissions. EPA's existing regulations prohibit the commingling of ethanol-blended RFG with RFG containing other oxygenates because the non-ethanol RFG is typically not able to be mixed with ethanol and still comply with the VOC performance standards. Since all RFG is currently required to contain oxygen, the regulations do not now contain a prohibition against combining ethanol-blended RFG with non-oxygenated RFG. With the removal of the oxygen content requirement for RFG, EPA expects that refiners and importers will be producing some RFG without oxygen and some with ethanol or other oxygenates. Mixing ethanol-blended RFG with non-oxygenated RFG has the same potential to create an RVP "boost" for the non-oxygenated gasoline as mixing ethanol-blended RFG with RFG blended with other oxygenates. This is of particular concern regarding RFG because most refiners and importers comply with the RFG VOC emissions performance standard on an annual average basis calculated at the point of production or importation. All downstream parties are prohibited from marketing RFG which does not comply with a less stringent downstream VOC standard. However, even though the combined gasoline may meet the downstream VOC standard, combining ethanol-blended RFG with non-oxygenated RFG may cause some gasoline to have VOC emissions which are higher on average than the gasoline as produced or imported. Thus, today's rule extends the commingling prohibition currently in the fuels regulations to include a prohibition against combining VOC-controlled ethanol-blended RFG with VOC-controlled non-oxygenated RFG during the period January 1 through September 15, with one exception, described below.

⁴ EPA is developing a rule which will allow RBOB refiners and importers to use an alternative method of quality assurance (QA) oversight of downstream oxygenate blenders in lieu of the contract and QA requirements in §§ 80.69(a)(6) and (a)(7). This alternative method consists of a QA sampling and testing survey program carried out by an independent surveyor pursuant to a survey plan approved by EPA. This alternative QA method is available to RBOB refiners and importers under enforcement discretion until the rule is promulgated, or December 31, 2007, whichever is earlier. See Letter to Edward H. Murphy, Downstream General Manager, American Petroleum Institute, dated December 22, 2005, from Grant Y. Nakayama, Assistant Administrator, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency.

⁵ For a discussion of the downstream oxygenate blending requirements, see the preamble to the RFG final rule at 59 FR 7770 (February 16, 1994).

⁶ The effective date for this rule is May 5, 2006, or 60 days from the date of publication of the rule in the **Federal Register**, whichever is later.

The Energy Act contains a provision which specifically addresses the combining of ethanol-blended RFG with non-ethanol-blended RFG.⁷ Under this new provision, retail outlets are allowed to sell non-ethanol-blended RFG which has been combined with ethanol-blended RFG under certain conditions. First, each batch of gasoline to be blended must have been "individually certified as in compliance with subsections (h) and (k) prior to being blended." Second, the retailer must notify EPA prior to combining the gasolines and identify the exact location of the retail outlet and specific tank in which the gasoline is to be combined. Third, the retailer must retain, and, upon request by EPA, make available for inspection certifications accounting for all gasoline at the retail outlet. Fourth, retailers are prohibited from combining VOC-controlled gasoline with non-VOC-controlled gasoline between June 1 and September 15. Retailers are also limited with regard to the frequency in which batches of non-ethanol-blended RFG may be combined with ethanol-blended RFG. Retailers may combine such batches of RFG a maximum of two periods between May 1 and September 15. Each period may be no more than ten consecutive calendar days. Today's direct final rule implements this provision of the Energy Act.

This new provision will typically be used by retail outlets to change from the use of RFG containing ethanol to RFG not containing ethanol or vice versa. (Such a change is usually referred to as a "tank turnover.") Such blending can result in additional VOC emissions, perhaps resulting in gasoline that does not comply with downstream VOC standards. The Energy Act is unclear as to when the gasoline in the tank where blending occurs must be in compliance with the downstream VOC standard.

EPA has already promulgated regulations setting out a methodology for making tank turnovers. 40 CFR 80.78(a)(10). EPA believes retailers and wholesale purchaser-consumers should have additional flexibility during the time that they are converting their tanks from one type of RFG to another, while minimizing the time period during which non-compliant gasoline is present in their tanks and being sold. Today's changes provide additional flexibility to the regulated parties by interpreting the Energy Act to provide retailers and wholesale purchaser-consumers with relief from compliance with the downstream VOC standard

during the ten-day blending period, but requiring that the gasoline in the tank thereafter be in compliance or be deemed in compliance with the downstream VOC standard.

To provide assurance that gasoline is in compliance with the downstream VOC standard after the ten-day period, today's regulations provide that there be two options available for retailers and wholesale purchaser-consumers. Under the first option, the retailer may add both ethanol-blended RFG and non-ethanol-blended RFG to the same tank an unlimited number of times during the ten-day period, but must test the gasoline in the tank at the end of the ten-day period to make sure that the RFG is in compliance with the VOC standard. Under the second option, the retailer must draw the tank down as much as practicable at the start of the ten-day period, before RFG of another type is added to the tank, and add only RFG of one type to the tank during the ten-day period. That is, the retailer may not add both ethanol-blended RFG and non-ethanol-blended RFG to the tank during the ten-day period, but may add only one of these types of RFG. EPA believes that when retailers and wholesale purchaser-consumers use this second option it is likely that their gasoline will comply with the downstream VOC standard at the end of the ten-day period, so that testing will not be necessary. We also believe that this approach is compatible with current practices of most retailers and wholesale purchaser-consumers, and expect that most will find it preferable to testing at the end of the ten-day period.

The commingling provisions apply at a retail level such that each retailer may take advantage of a maximum of two ten-day blending periods between May 1 and September 15 of each calendar year. Thus, the options described above would be available to each retail outlet for each of two ten-day periods during the VOC control period. During each ten-day period the options are available for all tanks at that retail outlet.

Regarding the requirement that each batch of gasoline to be blended must have been individually certified as in compliance with subsections (h) and (k), EPA notes that all gasoline in compliance with RFG requirements is deemed certified under section 211(k) pursuant to § 80.40(a). Section 211(h) addresses RVP requirements for gasoline, but EPA does not have a program to certify gasoline as in compliance with this provision. For purposes of the commingling exception for retail outlets incorporated today in § 80.78(a)(8), EPA will deem gasoline

that is in compliance with the regulatory requirements implementing section 211(h) to be certified under that section. Regarding the requirement that retailers retain and make available to EPA upon request "certifications" accounting for all gasoline at the retail outlet, EPA will deem this requirement fulfilled where the retailer retains and makes available to EPA, upon request, the product transfer documentation required under § 80.77 for all gasoline at the retail outlet.

Under today's direct final rule, the provisions which allow retailers to sell non-ethanol-blended RFG that has been combined with ethanol-blended RFG also apply to wholesale purchaser-consumers. Like retailers, wholesale purchaser-consumers are parties who dispense gasoline into vehicles, and EPA interprets the Energy Act reference to retailers as applying equally to them. As a result, wholesale purchaser-consumers are treated in the same manner as retailers under this rule. This is consistent with the manner in which wholesale purchaser-consumers have been treated in the past under the fuels regulations.

Most of the provisions of this rule are necessary to implement amendments to the Clean Air Act included in the Energy Act that eliminate the RFG oxygen content requirement and allow limited commingling of ethanol-blended and non-ethanol-blended RFG. The extension of the general commingling prohibition in the fuels regulations to cover non-oxygenated RFG, and the provisions requiring refiners and importers to conduct oversight of downstream blenders adding oxygen to RBOB, are necessary because of the Energy Act amendments, but are issued pursuant to authority of CAA section 211(k). Both provisions extend current programs to reflect the presence of non-oxygenated RFG, and are designed to enhance environmental benefits of the RFG program at reasonable cost to regulated parties.

IV. Environmental Effects of This Action

Little or no environmental impact is anticipated to occur as a result of today's action to remove the oxygenate requirement for RFG. The RFG standards consist of content and emission performance standards. Refiners and importers will have to continue to meet all the emission performance standards for RFG whether or not the RFG contains any oxygenate. This includes both the VOC and NO_x emission performance standards, as well as the air toxics emission performance standards which were tightened in the

⁷ Energy Policy Act of 2005, Public Law 109-58 (HR6), section 1513, 119 STAT 594, 1088-1090 (2005).

mobile source air toxics (MSAT) rule in 2001.⁸ New MSAT standards currently under development are anticipated to achieve even greater air toxics emission reductions.

We have analyzed the potential impacts on emissions that could result from removal of the oxygenate requirement in the context of requests for waivers of the Federal oxygen requirement.⁹ We found that changes in ethanol use could lead to small increases in some emissions and small decreases in others while still meeting the RFG performance standards. These potential impacts are associated with the degree to which ethanol will continue to be blended into RFG after removal of the oxygen requirement. Past analyses have projected significant use of ethanol in RFG in California despite removal of the oxygenate requirement.¹⁰ Given current gasoline prices and the tightness in the gasoline market, the favorable economics of ethanol blending, a continuing concern over MTBE use by refiners, the emission performance standards still in place for RFG, and the upcoming renewable fuels mandate,¹¹ we believe that ethanol will continue to be used in RFG after the oxygen requirement is removed, and that as MTBE is phased out, it is likely to be replaced with ethanol to a large degree despite the removal of the oxygenate requirement. As a result, we believe that the removal of the oxygenate mandate will have little or no environmental impact in the near future. We will be looking at the long term effect of oxygenate use in the context of the rulemaking to implement the renewable fuels mandate.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action 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 or 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 the Executive Order.

It has been determined that this direct final rule does not satisfy the criteria stated above. As a result, this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Today's rule removes certain requirements for all refiners, importers and oxygenate blenders of RFG. Although small additional compliance costs may be incurred by some refiners and importers as a result of this rule, on balance, this rule is expected to greatly reduce overall compliance costs for all refiners, importers and oxygenate blenders. This rule also provides options for gasoline retailers to commingle certain compliant gasolines which otherwise would be prohibited from being commingled. Although there may be small compliance costs associated with one of these options, we believe that the additional flexibility provided by this option will reduce overall compliance costs for these parties.

B. Paperwork Reduction Act

The modifications to the RFG information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The information collection modifications are not enforceable until OMB approves them.

This rule will have the effect of reducing the burdens on certain regulated parties under the reformulated gasoline regulations. All parties currently subject to the requirement to submit an annual oxygen averaging report will no longer be required to submit such report, resulting in an estimated total burden reduction of 100 hours and \$6,500(100 parties × 1 report/yr × 1 hr/report × \$65/hr). Oxygenate

blenders currently subject to the following requirements will no longer be subject to these requirements and associated burdens:

RFG batch reports: Total 2500 hours, \$162,500(25 blenders × 100 reports/yr × 1 hr/report × \$65/hr) plus \$600,000 in purchased services;

RFG annual report: Total 25 hours, \$1,625(25 blenders × 1 report/yr × 1 hr/report × \$65/hr);

RFG survey reports: Total 500 hours, \$32,500(25 blenders × 1 report/yr × 20 hrs/report × \$65/hr) plus \$1,200,000 for purchased services;

RFG attest engagement reports: Total 3000 hours, \$195,000(25 blenders × 1 report/yr × 120 hrs/report × \$65/hr) plus \$250,000 for purchased services.

The estimated total reduction in burdens for this rule is 6,125 hours and \$398,125, plus \$2,050,000 in purchased services.

Small testing costs may be associated with one of the options for gasoline retailers to commingle compliant gasolines. However, these testing costs are expected to be minimal and will be greatly outweighed by the flexibility provided by the option to commingle compliant gasolines.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. When this ICR is approved by OMB, the Agency will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this direct final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare

⁸ 66 FR 17230 (March 29, 2001).

⁹ See e.g., California Oxygen Waiver Decision, EPA420-S-05-005 (June 2005); Analysis of and Action on New York Department of Conservation's Request for a Waiver of the Oxygen Content Requirement in Federal Reformulated Gasoline, EPA420-D-05-06 (June 2005).

¹⁰ Technical Support Document: Analysis of California's Request for Waiver of the Reformulated Gasoline Oxygen Content Requirement for California Covered Areas, EPA420-R-01-016 (June 2001).

¹¹ Energy Policy Act of 2005, Public Law No. 109-58 (HR6), section 1501, 119 STAT 594, 1067-1076, (2005).

a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

This direct final rule removes certain requirements for all refiners, importers and oxygenate blenders of RFG, including small business refiners, importers and oxygenate blenders. Specifically, this rule removes the burden on refiners, importers and oxygenate blenders to comply with the RFG oxygen requirement and associated compliance requirements. Although in certain situations some refiners and importers, including some small refiners and importers, may be required to conduct additional oversight of oxygenate blenders, we believe that the relief from the burden of complying with the oxygen requirement will more than outweigh the burden of having to conduct any additional oversight. This rule also provides options for gasoline

retailers, including small gasoline retailers, to commingle certain compliant gasolines which otherwise would be prohibited from being commingled. Although there may be small compliance costs associated with one of these options, we believe that the additional flexibility provided by this option will reduce overall compliance costs for these parties. We have therefore concluded that today's direct final rule will relieve regulatory burden for all small entities subject to the RFG regulations.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector that will result in

expenditures of \$100 million or more. This rule affects gasoline refiners, importers and oxygenate blenders by removing the oxygen content requirement for RFG and associated compliance requirements. This rule also allows gasoline retailers an option to commingle certain compliant gasolines which otherwise would be prohibited from being commingled. As a result, this rule will have the overall effect of reducing the burden of the RFG regulations on these regulated parties. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule removes the oxygen standard for RFG and provides gasoline retailers the option to commingle certain compliant gasolines that otherwise would be prohibited from being commingled. The requirements of the rule will be enforced by the Federal government at the national level. Thus, Executive Order 13132 does not apply to this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the

relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.”

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This rule applies to gasoline refiners and importers who supply RFG, and to other parties downstream in the gasoline distribution system. Today’s action contains certain modifications to the Federal requirements for RFG, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under the Order has the potential to influence the regulation. This direct final rule is not subject to Executive Order 13045 because it is not economically significant and does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Acts That Significantly Affect Energy Supply, Distribution, or Use

This direct final rule is not an economically “significant energy action” as defined in Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it does not have a

significant adverse effect on the supply, distribution, or use of energy. This rule eliminates the oxygen content requirement for RFG and associated compliance requirements. This change will have the effect of reducing burdens on suppliers of RFG, which, in turn, may have a positive effect on gasoline supplies. RFG refiners and blenders may continue to use oxygenates at their discretion where and when it is most economical to do so. With the implementation of the renewable fuels standard also contained in the Energy Act, the blending of ethanol, in particular, into gasoline is expected to increase considerably, not decrease. Therefore, despite this action to remove the oxygenate mandate in RFG, when viewed in the context of companion energy legislation, overall use of oxygenates is expected to increase in the future. This rule also allows gasoline retailers to commingle certain compliant gasolines which otherwise would be prohibited from being commingled. This also may have a positive effect on gasoline supplies.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not establish new technical standards within the meaning of the NTTAA. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business regulatory Enforcement Fairness 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 the **Federal Register**. A “major rule” cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(a).

K. Clean Air Act Section 307(d)

This rule is subject to section 307(d) of the CAA. Section 307(d)(7)(B) provides that “[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review.” This section also provides a mechanism for the EPA to convene a proceeding for reconsideration, “[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.” Any person seeking to make such a demonstration to the EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

VI. Statutory Provisions and Legal Authority

The statutory authority for the actions in today’s direct final rule comes from sections 211(c), 211(k) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: February 14, 2006.

Stephen L. Johnson,
Administrator.

■ 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

Subpart A—[Amended]

■ 2. Section 80.2 is amended by revising paragraph (ii) to read as follows:

§ 80.2 Definitions.

(ii) *Reformulated gasoline credit* means the unit of measure for the paper transfer of benzene content resulting from reformulated gasoline which contains less than 0.95 volume percent benzene.

Subpart D—[Amended]

■ 3. Section 80.41 is amended by:

■ a. In the table in paragraph (e), removing the entry

“Oxygen content (percent, by weight) ≥2.0”;

■ b. In the table in paragraph (f), removing the entry

“Oxygen content (percent by weight):
Standard ≥2.1
Per-Gallon Minimum ≥1.5”

■ b. Removing and reserving paragraph (o); and

■ c. Revising paragraph (q) heading and introductory text and (q)(1), with paragraphs (o) and (q) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(o) [Reserved]

* * * * *

(q) *Refineries and importers subject to adjusted standards.* Standards for average compliance that are adjusted to be more or less stringent by operation of paragraphs (k), (l) (m) or (n) of this section apply to average reformulated gasoline produced at each refinery or imported by each importer as follows:

(1) Adjusted standards for a covered area apply to averaged reformulated gasoline that is produced at a refinery if:

(i) Any averaged reformulated gasoline from that refinery supplied the covered area during any year a survey was conducted which gave rise to a standards adjustment; or

(ii) Any averaged reformulated gasoline from that refinery supplies the covered area during any year that the standards are more stringent than the initial standards; unless

(iii) The refiner is able to show that the volume of averaged reformulated gasoline from a refinery that supplied the covered area during any years under paragraphs (q)(1)(i) or (ii) of this section was less than one percent of the

reformulated gasoline produced at the refinery during that year, or 100,000 barrels, whichever is less.

* * * * *

■ 4. Section 80.65 is amended by:

■ a. Revising the heading;

■ b. Revising paragraphs (c)(1)(ii) and (c)(3), removing and reserving paragraph (c)(2) and removing paragraph (c)(1)(iii);

■ c. Revising paragraph (d)(2)(vi), removing and reserving (d)(2)(v)(D); and

■ d. Revising paragraph (h) to read as follows:

§ 80.65 General requirements for refiners and importers.

* * * * *

(c) * * *

(1) * * *

(ii) Those standards and requirements it designated under paragraph (d) of this section for average compliance on an average basis over the applicable averaging period.

(2) [Reserved]

(3)(i) For each averaging period, and separately for each parameter that may be met either per-gallon or on average, any refiner shall designate for each refinery, or any importer shall designate its gasoline or RBOB as being subject to the standard applicable to that parameter on either a per-gallon or average basis. For any specific averaging period and parameter all batches of gasoline or RBOB shall be designated as being subject to the per-gallon standard, or all batches of gasoline and RBOB shall be designated as being subject to the average standard. For any specific averaging period and parameter a refiner for a refinery, or any importer may not designate certain batches as being subject to the per-gallon standard and others as being subject to the average standard.

(ii) In the event any refiner for a refinery, or any importer fails to meet the requirements of paragraph (c)(3)(i) of this section and for a specific averaging period and parameter designates certain batches as being subject to the per-gallon standard and others as being subject to the average, all batches produced or imported during the averaging period that were designated as being subject to the average standard shall, *ab initio*, be redesignated as being subject to the per-gallon standard. This redesignation shall apply regardless of whether the batches in question met or failed to meet the per-gallon standard for the parameter in question.

* * * * *

(d) * * *

(2) * * *

(v) * * *

(D) [Reserved]

* * * * *

(vi) In the case of RBOB, the gasoline must be designated as RBOB and the designation must include the type(s) and amount(s) of oxygenate required to be blended with the RBOB.

* * * * *

(3) Every batch of reformulated or conventional gasoline or RBOB produced or imported at each refinery or import facility shall be assigned a number (the “batch number”), consisting of the EPA-assigned refiner or importer registration number, the EPA facility registration number, the last two digits of the year in which the batch was produced, and a unique number for the batch, beginning with the number one for the first batch produced or imported each calendar year and each subsequent batch during the calendar year being assigned the next sequential number (e.g., 4321–54321–95–000001, 4321–543321–95–000002, etc.)

* * * * *

(h) *Compliance audits.* Any refiner and importer of any reformulated gasoline or RBOB shall have the reformulated gasoline and RBOB it produced or imported during each calendar year audited for compliance with the requirements of this subpart D, in accordance with the requirements of subpart F, at the conclusion of each calendar year.

* * * * *

■ 5. Section 80.67 is amended by:

■ a. Revising paragraphs (a)(1) and (a)(2)(i)(A);

■ b. Removing and reserving paragraph (b)(3);

■ c. Removing and reserving paragraph (f);

■ d. Revising paragraphs (g) introductory text, (g)(3), (g)(5) introductory text, (g)(6) introductory text, and removing and reserving paragraphs (g)(5)(i) and (g)(6)(i); and

■ e. Revising paragraphs (h)(1) introductory text, (h)(1)(iv), (h)(1)(v) and (h)(3)(ii), and removing paragraphs (h)(1)(vi), (h)(1)(vii) and (h)(1)(viii), to read as follows:

§ 80.67 Compliance on average

* * * * *

(a) * * *

(1) Any refiner or importer that complies with the compliance survey requirements of § 80.68 has the option of meeting the standards specified in § 80.41 for average compliance in addition to the option of meeting the standards specified in § 80.41 for per-gallon compliance; any refiner or importer that does not comply with the survey requirements must meet the standards specified in § 80.41 for per-gallon compliance, and does not have

the option of meeting standards on average.

(2)(i)(A) A refiner or importer that produces or imports reformulated gasoline that exceeds the average standard for benzene (but not for other parameters that have average standards) may use such gasoline to offset reformulated gasoline which does not achieve this average standard, but only if the reformulated gasoline that does not achieve this average standard is sold to ultimate consumers in the same covered area as was the reformulated gasoline which exceeds the average standard; provided that:

* * * * *

(b) * * *

(3) [Reserved]

* * * * *

(f) [Reserved]

(g) * * * To determine compliance with the averaged standards in § 80.41, any refiner for each of its refineries at which averaged reformulated gasoline or RBOB is produced, and any importer that imports averaged reformulated gasoline or RBOB shall, for each averaging period and for each portion of gasoline for which standards must be separately achieved, and for each relevant standard, calculate:

* * * * *

(3) For the VOC, NO_x, and toxics emissions performance standards, the actual totals must be equal to or greater than the compliance totals to achieve compliance.

* * * * *

(5) If the actual total for the benzene standard is greater than the compliance total, credits for this parameter must be obtained from another refiner or importer in order to achieve compliance:

(i) [Reserved]

* * * * *

(6) If the actual total for the benzene standard is less than the compliance totals, credits for this parameter are generated.

(i) [Reserved]

* * * * *

(h) * * *

(1) Compliance with the averaged standards specified in § 80.41 for benzene (but for no other standards or requirements) may be achieved through the transfer of benzene credits provided that:

* * * * *

(iv) The credits are transferred, either through inter-company or intra-company transfers, directly from the refiner or importer that creates the credits to the refiner or importer that uses the credits to achieve compliance; and

(v) Benzene credits are not used to achieve compliance with the maximum benzene content standards in § 80.41.

* * * * *

(3) * * *

(ii) No refiner or importer may create, report, or transfer improperly created credits; and

* * * * *

■ 6. Section 80.68 is amended by revising paragraphs (a) introductory text, (a)(3), (b) introductory text, (b)(4)(i), (b)(4)(ii), (c)(3), (c)(4)(i), and (c)(13)(v)(L), and removing and reserving paragraph (c)(12) to read as follows:

§ 80.68 Compliance surveys.

(a) * * * In order to satisfy the compliance survey requirements, any refiner or importer shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by the Administrator of EPA in each covered area which is supplied with any gasoline for which compliance is achieved on average that is produced by that refinery or imported by that importer. Such approval shall be based upon the survey program plan meeting the following criteria:

* * * * *

(3) In the event that any refiner or importer fails to properly carry out an approved survey program, the refiner or importer shall achieve compliance with all applicable standards on a per-gallon basis for the calendar year in which the failure occurs, and may not achieve compliance with any standard on an average basis during this calendar year. This requirement to achieve compliance per-gallon shall apply *ab initio* to the beginning of any calendar year in which the failure occurs, regardless of when during the year the failure occurs.

(b) * * * A refiner or importer shall be deemed to have satisfied the compliance survey requirements described in paragraph (a) of this section if a comprehensive program of surveys is properly conducted in accordance with a survey program plan which has been approved by the Administrator of EPA. Such approval shall be based upon the survey program plan meeting the following criteria:

* * * * *

(4) * * *

(i) Each refiner or importer who supplied any reformulated gasoline or RBOB to the covered area and who has not satisfied the survey requirements described in paragraph (a) of this section shall be deemed to have failed to carry out an approved survey program; and

(ii) The covered area will be deemed to have failed surveys for VOC and NO_x emissions performance, and survey series for benzene and toxic and NO_x emissions performance.

(c) * * *

(3)(i) A VOC survey and a NO_x survey shall consist of any survey conducted during the period June 1 through September 15;

(ii) A sample of gasoline taken at a retail outlet or wholesale purchaser-consumer facility that has within the past 30 days commingled ethanol blended reformulated gasoline with non-ethanol blended reformulated gasoline in accordance with the provisions in § 80.78(a)(8) shall not be used in a VOC survey required under this section.

(4)(i) A toxics and benzene survey series shall consist of all surveys conducted in a single covered area during a single calendar year.

* * * * *

(12) [Reserved]

(13) * * *

(v) * * *

(L) The average toxics emissions reduction percentage for simple model samples and the percentage for complex model samples, the average benzene percentage, and for each survey conducted during the period June 1 through September 15, the average VOC emissions reduction percentage for simple model samples and the percentage for complex model samples, and the average NO_x emissions reduction percentage for all complex model samples;

* * * * *

■ 7. Section 80.69 is amended by:

■ a. Revising paragraphs (a)(6)(ii) and (iii), (a)(10) introductory text, removing and reserving paragraphs (a)(8) and (a)(9), and removing paragraph (a)(6)(iv);

■ b. Revising paragraph (b);

■ c. Removing and reserving paragraph (c);

■ d. Revising paragraph (d); and

■ e. Revising paragraph (e), to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

* * * * *

(a) * * *

(6) * * *

(ii) Allow the refiner or importer to conduct the quality assurance sampling and testing required under this paragraph (a); and

(iii) Stop selling any gasoline found not to comply with the standards under which the RBOB was produced or imported.

* * * * *

(8) [Reserved]

(9) [Reserved]

(10) Specify in the product transfer documentation for the RBOB each oxygenate type or types and amount or range of amounts which, if blended with the RBOB will result in reformulated gasoline which:

* * * *

(b) *Requirements for oxygenate blenders.* For all RBOB received by any oxygenate blender, the oxygenate blender shall:

(1) Add oxygenate of the type(s) and amount (or within the range of amounts) specified in the product transfer documents for the RBOB; and

(2) Meet the recordkeeping requirements specified in § 80.74.

(c) [Reserved]

(d) *Requirements for distributors dispensing RBOB into trucks for blending.* Any distributor who dispenses any RBOB into any truck which delivers gasoline to retail outlets or wholesale purchase-consumer facilities, shall for such RBOB so dispensed:

(1) Transfer the RBOB only to an oxygenate blender who has registered with the Administrator or EPA as such; and

(2) Obtain from the oxygenate blender the oxygenate blender's EPA registration number.

(e) *Additional requirements for oxygenate blenders who blend oxygenate in trucks.* Any oxygenate blender who obtains any RBOB in any gasoline delivery truck shall on each occasion it obtains RBOB from a distributor, supply the distributor with the oxygenate blender's EPA registration number.

■ 8. Section 80.73 is amended by revising the introductory text to read as follows:

§ 80.73 Inability to produce conforming gasoline in extraordinary circumstances.

In appropriate extreme and unusual circumstances (e.g., natural disaster or Act of God) which are clearly outside the control of the refiner, importer, or oxygenate blender and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner, importer, or oxygenate blender, for a brief period, to distribute gasoline which does not meet the requirements for reformulated gasoline, or does not contain the type(s) and amount(s) of oxygenate required under § 80.69(b)(1), if:

* * * *

■ 9. Section 80.74 is amended by revising paragraph (c) heading and introductory text, (c)(2), and (d) introductory text to read as follows:

§ 80.74 Recordkeeping requirements.

* * * *

(c) *Refiners and importers of averaged gasoline.* In addition to other requirements of this section, any refiner or importer who produces or imports any reformulated gasoline for which compliance with one or more applicable standard is determined on an average shall maintain records containing the following information:

* * * *

(2) For any credits bought, sold, traded or transferred pursuant to § 80.67(h), the dates of the transactions, the names and EPA registration numbers of the parties involved, and the number of credits transferred.

(d) * * * Any oxygenate blender who blends any oxygenate with any RBOB shall, for each occasion such blending occurs, maintain records containing the following:

* * * *

■ 10. Section 80.75 is amended by revising the introductory text, paragraph (a) introductory text, (h), (i), (l), (m) and (n)(2); and removing and reserving paragraphs (a)(2)(vii) and (f) to read as follows:

§ 80.75 Reporting requirements.

Any refiner or importer shall report as specified in this section, and shall report such other information as the Administrator may require.

(a) * * * Any refiner or importer that produces or imports any reformulated gasoline or RBOB shall submit quarterly reports to the Administrator for each refinery at which such reformulated gasoline or RBOB was produced and for all such reformulated gasoline or RBOB imported by each importer. The refiner or importer shall include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year.

* * * *

(2) * * *

(vii) [Reserved]

* * * *

(f) [Reserved]

* * * *

(h) *Credit transfer reports.* As an additional part of the fourth quarterly report required by this section, any refiner or importer shall, for each refinery or importer, supply the following information for any benzene credits that are transferred from or to another refinery or importer:

(1) The names, EPA-assigned registration numbers and facility identification numbers of the transferor and transferee of the credits;

(2) The number(s) of credits that were transferred; and

(3) The date(s) of the transaction(s).

(i) *Covered areas of gasoline use report.* Any refiner that produced any reformulated gasoline that was to meet any reformulated gasoline standard on average ("averaged reformulated gasoline") shall, for each refinery at which such averaged reformulated gasoline was produced submit to the Administrator, with the fourth quarterly report, a report that contains the identity of each covered area that was supplied with any averaged reformulated gasoline produced at each refinery during the previous year.

* * * *

(l) *Reports for per-gallon compliance gasoline.* In the case of reformulated gasoline or RBOB for which compliance with each of the standards set forth in § 80.41 is achieved on a per-gallon basis, the refiner or importer shall submit to the Administrator, by the last day of February of each year beginning in 1996, a report of the volume of each designated reformulated gasoline or RBOB produced or imported during the previous calendar year for which compliance is achieved on a per-gallon basis, and a statement that each gallon of this reformulated gasoline or RBOB met the applicable standards.

(m) *Reports of compliance audits.* Any refiner or importer shall cause to be submitted to the Administrator, by May 31 of each year, the report of the compliance audit required by § 80.65(h).

(n) * * *

(2) Signed and certified as correct by the owner or a responsible corporate officer of the refiner or importer.

■ 11. Section 80.76 is amended by revising paragraph (a) to read as follows:

§ 80.76 Registration of refiners, importers or oxygenate blenders.

(a) Registration with the Administrator of EPA is required for any refiner and importer that produces or imports any reformulated gasoline or RBOB, and any oxygenate blender that blends oxygenate into RBOB.

* * * *

■ 12. Section 80.77 is amended by removing and reserving paragraph (g)(2)(ii) and revising paragraph (i)(1) to read as follows:

§ 80.77 Product transfer documentation.

* * * *

(g) * * *

(2) * * *

(ii) [Reserved]

* * * *

(i) * * *

(1) The oxygenate type(s) and amount(s) that are suitable for blending with the RBOB;

* * * *

■ 13. Section 80.78 is amended by revising paragraphs (a)(8) and (a)(11)(iv), and removing and reserving paragraph (a)(1)(ii) to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

* * * * *

(a) * * *

(1) * * *

(ii) [Reserved]

* * * * *

(8)(i) No person may combine any ethanol-blended VOC-controlled reformulated gasoline with any non-ethanol-blended VOC-controlled reformulated gasoline during the period January 1 through September 15, except that:

(ii) Notwithstanding the prohibition in paragraph (a)(8)(i), retailers and wholesale purchaser-consumers may combine at a retail outlet or wholesale purchaser-consumer facility ethanol-blended VOC-controlled reformulated gasoline with non-ethanol-blended VOC-controlled reformulated gasoline, provided that the retailer or wholesale purchaser-consumer:

(A) Combines only batches of reformulated gasoline that have been certified under this subpart;

(B) Notifies EPA prior to combining the gasolines and identifies the exact location of the retail outlet or wholesale purchase-consumer facility and the specific tank in which the gasolines will be combined;

(C) Retains and, upon request by EPA, makes available for inspection product transfer documentation accounting for all gasoline at the retail outlet or wholesale purchaser-consumer facility; and

(D) Does not combine any VOC-controlled gasoline with any non-VOC controlled gasoline between June 1 and September 15 of each calendar year;

(iii) A retailer or wholesale purchaser-consumer may combine ethanol-blended reformulated gasoline with non-ethanol-blended reformulated gasoline under paragraph (a)(8)(ii) of this section a maximum of two periods between May 1 and September 15 of each calendar year, each such period to extend for a period of no more than ten consecutive calendar days. At the end of the ten-day period, the gasoline must be in compliance with the VOC minimum standard under § 80.41.

(A) The retailer or wholesale purchaser-consumer may demonstrate compliance with the VOC minimum standard by testing the gasoline at the end of the ten-day period using the test methods in § 80.46, where the test results show that the gasoline meets the VOC minimum standard. Under this

option, the retailer or wholesale purchaser-consumer may add both ethanol-blended reformulated gasoline and non-ethanol-blended reformulated gasoline to the same tank an unlimited number of times during the ten-day period; or

(B) The retailer or wholesale purchaser-consumer will be deemed in compliance with the VOC minimum standard where the retailer or wholesale purchaser-consumer draws the tank down as low as practicable before receiving product of the other type into the tank and receives only product of the other type into the tank during the ten-day period. Under this option, the retailer or wholesale purchaser-consumer is not required to test the gasoline at the end of the ten-day period.

(iv) Nothing in paragraphs (a)(8)(ii) or (iii) of this section shall preempt existing State laws or regulations regulating the combining of ethanol-blended reformulated gasoline with non-ethanol-blended reformulated gasoline or prohibit a State from adopting such laws or regulations in the future.

* * * * *

(11) * * *

(iv) When transitioning from RBOB to reformulated gasoline, the reformulated gasoline must meet all applicable standards that apply at the terminal subsequent to any oxygenate blending;

* * * * *

■ 14. Section 80.79 is amended by adding paragraph (a)(5) and revising paragraph (c)(1) to read as follows:

§ 80.79 Liability for violations of the prohibited activities.

(a) * * *

(5) Notwithstanding the provisions in paragraphs (a)(1) through (a)(4) of this section: (i) Only a retailer or wholesale purchaser-consumer shall be deemed in violation for combining gasolines in a manner that is inconsistent with § 80.78(a)(8)(ii) or (iii), or for gasoline which does not comply with the VOC minimum standard under § 80.41 after the retailer or wholesale purchaser-consumer combines or causes the combining of compliant gasolines in a manner inconsistent with § 80.78(a)(8)(ii) or (iii);

(ii) No person shall be deemed in violation for gasoline which does not comply with the VOC minimum standard under § 80.41 where the non-compliance is solely due to the combining of compliant gasolines by a retailer or wholesale purchaser-

consumer in a manner that is consistent with § 80.78(a)(8)(ii) and (iii).

* * * * *

(c) * * *

(1) Of a periodic sampling and testing program to determine if the applicable maximum and/or minimum standards for benzene, RVP, or VOC emission performance are met.

* * * * *

■ 15. Section 80.81 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 80.81 Enforcement exemptions for California gasoline.

* * * * *

(b)(1) Any refiner or importer of gasoline that is sold, intended for sale, or made available for sale as a motor fuel in the State of California is, with regard to such gasoline, exempt from the compliance survey provisions contained in § 80.68.

(2) Any refiner or importer of California gasoline is, with regard to such gasoline, exempt from the independent analysis requirements contained in § 80.65(f).

* * * * *

Subpart F—[Amended]

■ 16. Section 80.125 is amended by revising paragraphs (a), (c) and (d) introductory text, to read as follows:

§ 80.125 Attest engagements.

(a) Any refiner and importer subject to the requirements of this subpart F shall engage an independent certified public accountant, or firm of such accountants (hereinafter referred to in this subpart F as “CPA”), to perform an agreed-upon procedures attestation engagement of the underlying documentation that forms the basis of the reports required by §§ 80.75 and 80.105.

* * * * *

(c) The CPA may complete the requirements of this subpart F with the assistance of internal auditors who are employees or agents of the refiner or importer, so long as such assistance is in accordance with the Statements on Standards for Attestation Engagements.

(d) Notwithstanding the requirements of paragraph (a) of this section, any refiner or importer may satisfy the requirements of this subpart F if the requirements of this subpart F are completed by an auditor who is an employee of the refiner or importer, provided that such employee:

* * * * *

■ 17. Section 80.126 is amended by revising paragraph (b) to read as follows:

§ 80.126 Definitions.

* * * * *

(b) *Credit Trading Records.* Credit trading records shall include worksheets and EPA reports showing actual and complying totals for benzene; credit calculation worksheets; contracts; letter agreements; and invoices and other documentation evidencing the transfer of credits.

* * * * *

■ 18. Section 80.128 is amended by revising paragraph (e)(2) to read as follows:

§ 80.128 Alternative agreed upon procedures for refiners and importers.

* * * * *

(e) * * *

(2) Determine that the requisite contract was in place with the downstream blender designating the required blending procedures;

* * * * *

■ 19. Section 80.129 is removed and reserved.

■ 20. Section 80.130 is amended by revising paragraph (a) to read as follows:

§ 80.130 Agreed upon procedures reports.

(a) *Reports.* (1) The CPA or CIA shall issue to the refiner or importer a report summarizing the procedures performed in the findings in accordance with the attest engagement or internal audit performed in compliance with this subpart.

(2) The refiner or importer shall provide a copy of the auditor's report to the EPA within the time specified in § 80.75(m).

* * * * *

■ 21. Section 80.133 is amended by revising paragraphs (h)(1) and (h)(4) to read as follows:

§ 80.133 Agreed upon procedures for refiners and importers.

* * * * *

(h) * * *

(1) Obtain from the refiner or importer the oxygenate type and volume, and oxygen volume required to be hand blended with the RBOB, in accordance with § 80.69(a)(2).

* * * * *

(4) Perform the following procedures for each batch report included in paragraph (h)(4)(i)(B) of this section:

(i) Obtain and inspect a copy of the executed contract with the downstream oxygenate blender (or with an intermediate owner), and confirm that the contract:

(A) Was in effect at the time of the corresponding RBOB transfer; and

(B) Allowed the company to sample and test the reformulated gasoline made by the blender.

(ii) Obtain a listing of RBOB blended by downstream oxygenate blenders and the refinery's or importer's oversight test results, and select a representative sample, in accordance with the guidelines in § 80.127, from the listing of test results and for each test selected perform the following:

(A) Obtain the laboratory analysis for the batch, and agree the type of oxygenate used and the oxygenate content appearing in the laboratory analysis to the instructions stated on the product transfer documents corresponding to a RBOB receipt immediately preceding the laboratory analysis and used in producing the reformulated gasoline batch selected within the acceptable ranges set forth at § 80.65(e)(2)(i);

(B) Calculate the frequency of sampling and testing or the volume blended between the test selected and the next test; and

(C) Agree the frequency of sampling and testing or the volume blended between the test selected and the next test to the sampling and testing frequency rates stated in § 80.69(a)(7).

* * * * *

■ 22. Section 80.134 is removed.

[FR Doc. 06-1612 Filed 2-21-06; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[DA 06-303, MB Docket No. 05-52, RM-10300]

Digital Television Broadcast Service; Johnstown and Jeannette, PA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Viacom Television Stations Group of Pittsburgh, Inc., licensee of station WNPA-DT, channel 30, Johnstown, Pennsylvania, substitutes DTV channel 49 for DTV channel 30 at Johnstown and re-allots DTV channel 49 from Johnstown to Jeannette, Pennsylvania. See 70 FR 10351, March 3, 2005. DTV channel 49 can be allotted to Jeannette, Pennsylvania, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 40-23-34 N. and 79-46-54 W. with a power of 437, HAAT of 301 meters and with a DTV service population of 2851 thousand. Since the community of Jeannette is located

within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418-1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 05-52, adopted February 7, 2006, and released February 15, 2006. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20554, telephone 301-816-2820, facsimile 301-816-0169, or via e-mail joshir@erols.com.

This document does not contain [new or modified] information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

The Commission will send a copy of this Report & Order in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Pennsylvania, is amended by removing DTV channel 30 at Johnstown and adding Jeannette, DTV channel 49.