

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR-2003-0019 FRL-8006-4]

RIN 2060-AK77

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline Including Butane Blenders and Attest Engagements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to take action on certain modifications to the reformulated and conventional gasoline regulations. Based on experience gained since the promulgation of these regulations, EPA proposed these modifications along with various others in a Notice of Proposed Rulemaking (NPRM) published on July 11, 1997. In final rules published on December 31, 1997 and December 28, 2001, EPA took final action on several of the modifications proposed in the July 11, 1997 NPRM. Today's action proposes to take action on many of the remaining modifications in the 1997 NPRM.

The modifications in today's proposed rule would correct technical errors, clarify certain provisions, and codify guidance previously issued by the Agency. This rule also would make several minor technical corrections to the RFG rule which were not included in the July 11, 1997 proposal, and make two minor technical corrections to the Tier 2 gasoline sulfur rule. The emissions benefits achieved from the RFG and conventional gasoline programs would not be reduced as a result of this proposed rule.

DATES: Comments must be received on or before February 13, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR-2003-0019 by one of the following methods:

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

2. *Agency Web site:* <http://www.epa.gov/edocket>. EDOCKET, EPA's

electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. *E-mail:* <http://www.epa.gov/docket>, attention ID No. OAR-2003-0019.

4. *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 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. OAR-2003-0019. 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.epa.gov/edocket>, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "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 EDOCKET or 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 EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET 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, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460; telephone: (202) 343-9624; fax: (202) 343-2803, e-mail address: mbennett@epa.gov.

SUPPLEMENTARY INFORMATION:

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 gasoline motor fuel. Regulated categories and entities affected by this action include:

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

^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 questions regarding applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, 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:

- a. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
 - b. 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.
 - c. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
 - d. Describe any assumptions and provide any technical information and/or data that you used.
 - e. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
 - f. Provide specific examples to illustrate your concerns, and suggest alternatives.
 - g. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
 - h. 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 Rule

- I. General Information
- II. Corrections of Typographical Errors and Minor Revisions
- III. RFG and Anti-dumping Standards/Models
 - A. Effective Dates for Standard Changes Due to Survey Failures
 - B. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation
- IV. RFG Compliance Requirements
 - A. Clarification of Requirements to Test RFG and RBOB

- B. Transfer of Credits
- C. Compliance Survey Requirements
- D. Product Transfer Documentation (PTD)
- E. Exemption for Gasoline Used for Aviation and Racing Purposes
- F. References to Renewable Oxygenate Requirements
- G. Butane Blending
- H. Gasoline Treated as Blendstock (GTAB)
- V. Anti-Dumping Requirements
 - A. Imports of Gasoline by Truck
 - B. Date for Submission of Attest Engagement Reports
- VI. Attest Engagements
 - A. Modification to Agreed-Upon Procedures in §§ 80.128 and 80.129, and Promulgation of Agreed-Upon Procedures in §§ 80.133 and 80.134
 - B. Attest Procedures for GTAB, Previously Certified Gasoline (PCG), Truck Importers and Butane Blenders
- VII. Public Participation
- VIII. Statutory and Executive Order Reviews
- IX. Statutory Provisions and Legal Authority

D. Modification of Provisions

Some of the provisions in today's rule may be modified in a future rulemaking to reflect a recent Congressional mandate requiring the removal of the RFG oxygen requirement.¹

II. Corrections of Typographical Errors and Minor Revisions

In the July 7, 1997 Notice of Proposed Rulemaking (NPRM), EPA proposed the following corrections of typographical errors and minor revisions to the RFG and conventional gasoline regulations. EPA received either favorable or no comments on these changes. We are aware of no new information or circumstances arising since the proposal that would be likely to substantially change the impact or significance of these changes. Today's rule again proposes these changes.

§ 80.2(wv)	Adds a definition of "Gasoline Treated as Blendstock" or "GTAB," which is imported gasoline that is excluded from the import facility's compliance calculations, but is treated as blendstock in a related refinery that includes the GTAB in its refinery compliance calculations.
§ 80.2(ee)	Revises the definition of reformulated gasoline to delete the reference to a gasoline marker under § 80.82, since the current regulations do not include a requirement for a conventional gasoline marker.
§ 80.49 (a)	Corrects an incorrect reference to § 80.43(c). The correct reference is § 80.49(a)(5)(i).
§ 80.49(a)(1)	Corrects a typographical error in the formula at the bottom of the new parameter under Fuel 2. Change is from "C+B/2" to "(C+B)/2."
§ 80.49(a)(3)	Corrects an incorrect reference to § 80.43(c). The correct reference is to § 80.49(a)(5)(i).
§ 80.49(b)	Corrects an incorrect reference to § 80.43(c). The correct reference is § 80.49(a)(5)(i).
§ 80.50(a)(2)	Corrects an incorrect reference to § 80.49(a). The correct reference is § 80.49(b).
§ 80.65(e)(2)(ii)(B)	Revises to correct an inadvertent omission of the word "importer" in the first sentence.
§ 80.65(g)	Revises to delete heading: "Marking of conventional gasoline," since the regulations do not include provisions for requiring a conventional gasoline marker.
§ 80.68(b)(2)(ii)	Revises the word "area" to read "area(s)" to clarify the application of the equation to a situation in which more than one area fails a survey or survey series in a single year.

¹ Energy Policy Act of 2005, Pub. L. 109-58 (HR6), § 1504, 119 STAT 594, 1076-1077 (2005).

§ 80.69(a)(4)	Revises to delete this provision. This provision requires refiners and importers to determine the properties of re-formulated gasoline blendstock for oxygenate blending (RBOB) which are sufficient to allow parties downstream from the refinery or importer to establish, through sampling and testing, if the RBOB has been altered or contaminated such that it will not meet the applicable RFG standards subsequent to the addition of the specified type and amount of oxygenate. This provision was intended to facilitate downstream quality assurance programs, however, since most RBOB is transported in a fungible manner, we believe there is little value to this requirement.
§ 80.69(e)(2)(i)(A)	Corrects a typographical error. The word "to" was inadvertently omitted in the final rule.
§ 80.69(e)(2)(v)	Corrects an incorrect reference to § 80.70(b)(2)(i). The correct reference is § 80.65(e)(2)(i).
§ 80.75(a)	Revises to require refiners, importers, and oxygenate blenders to include notification to EPA of per-gallon versus average election with the first quarterly reports submitted each year, in accordance with the provisions of § 80.65 (c)(3) which require refiners, importers and oxygenate blenders to designate whether, for a given parameter, all batches of gasoline are being subject to the per-gallon or average standards.

The following technical corrections are also being proposed to be made to

the fuels regulations in 40 CFR Part 80. These corrections are not substantive in

nature and do not change the requirements of the fuels programs.

§ 80.2(c)	Revises footnote 1 in § 80.2(c) to include the Northern Mariana Islands in the definition of "State" under 40 CFR Part 80, in accordance with the definition of "State" in § 3019(d) of the Clean Air Act. The exclusion of the Northern Mariana Islands from the list of U.S. territories in footnote 1 is an oversight in the current regulations.
§ 80.45(d)(1)(iv)(B)	Reinstates regulatory text inadvertently deleted from the Code of Federal Regulations (CFR) when certain changes were made to this section pursuant to a rulemaking on December 31, 1997 (62 FR 6819).
§ 80.65(d)(2)(iii)	Removes and reserves this section. This section relates to the oxygenated fuels program requirements (OPRG), which were eliminated by rulemaking on November 6, 1997 (62 FR 50132).
§ 80.74(b)(2)	Deletes the requirement to retain results of a test for the presence of a gasoline marker. The current regulations do not include a requirement for a gasoline marker.
§ 80.74(f)	Revises to remove and reserve this paragraph since the regulations do not include provisions for requiring a conventional gasoline marker.
§ 80.75(f)(2)(ii)	Revises to delete references to OPRG requirements which have been eliminated.
and (f)(2)(iii)	
§ 80.76(b)	Revises to delete reference to "applicable blendstocks," since all requirements relating to applicable blendstocks have been eliminated.
§ 80.78(a)(1)(iii)	Deletes this provisions since it relates to OPRG requirements which have been eliminated.
§ 80.78(a)(11)	Revises to correct an incorrect reference to § 80.78(a)(8). The correct reference is § 80.78(a)(7).
§ 80.78(a)(3)	Deletes the prohibition against manufacturing and selling or distributing, or offering for sale or distribution, dispensing, supplying, or offering for supply, storing, transporting or causing the transportation of gasoline represented as conventional gasoline which does not contain a gasoline marker. The current regulations do not include a requirement for a gasoline marker.
§ 80.81(c)(4)	Revises to delete this provision as it pertains to a conventional gasoline marker requirement and the regulations do not include provisions for a gasoline marker.
§ 80.101(g)(9)	Revises to delete references to the blendstock tracking and accounting requirements of § 80.102, which have been eliminated.
§ 80.410(f)(4)(ii)	Corrects an incorrect reference to § 80.65(e)(2)(iii). The correct reference is § 80.65(f)(2)(iii).
§ 80.410(r)(1)(iv)	Corrects an incorrect reference to § 80.410(f)(3)(iii). The correct reference is to § 80.410(f)(4)(iii).

III. RFG and Anti-Dumping Standards/Models

A. Effective Dates for Standard Changes Due to Survey Failures

Under § 80.41(p), when a minimum or maximum per-gallon RFG standard is changed to be more stringent as a result of a survey failure, the effective date for the new standard is ninety days after EPA announces the new standard. In the NPRM, we determined that additional time is needed because of the lag time between the date refiners and importers begin producing gasoline to a new standard and the date this gasoline displaces the earlier gasoline through the distribution system. As a result, we proposed the following effective dates on which the new standard would be required after the date EPA announces the new standard: 60 days for gasoline produced at a refinery or imported by an importer; 120 days for facilities

downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 150 days for retail outlets and wholesale purchaser-consumers. Under this approach, refiners and importers would have approximately two months to begin meeting the new standard, downstream parties such as terminal operators would have about two months to transition to the new standard after shipments of gasoline meeting the new standard begin, and retailers and wholesale users would have about one month to transition after terminals must begin shipping gasoline meeting the new standard. We believed the times proposed for these stages were consistent with current industry practice for transitioning to new standards, such as the transition to meet the summertime high ozone season VOC standards each spring. However, as discussed below, in response to the

comments on the proposal, we now believe that a somewhat longer transition time is needed.

One commenter supported the proposal. However, two commenters said that the proposal does not allow sufficient time for parties to make the transition to a new standard following a survey failure. One of the commenters noted that prior EPA guidance allowed 90 days at the refinery gate and an additional 90 days at all downstream locations. See "Surveys," RFG/Anti-dumping Questions and Answers, November 12, 1996. Another commenter said that refiners need at least 90 days to allow time to plan, renegotiate supply contracts, and make refining/distribution adjustments necessary to comply with the new standard.

We agree with the commenters that additional time may be necessary for refiners to make the transition to the new standard in the event of a standard

change due to a survey failure. Unlike the transition to the VOC standard which occurs each year, a new standard due to a survey failure may not be anticipated in sufficient time for refiners make necessary adjustments. As a result, we are proposing that the effective dates for standard changes due to a survey failure, expressed in the number of days after the date EPA announces the new standard, be as follows: 90 days for gasoline produced at a refinery or imported by an importer; 150 days for facilities downstream of the refinery or importer other than retail outlets and wholesale purchaser-consumers; and 180 days for retail outlets and wholesale purchaser-consumers. This structure is consistent with the prior guidance issued by EPA which allowed 90 days for refiners and importers and 180 days for downstream parties, but also provides for a 30 day transition period from the terminals to the retail outlets and wholesale purchase-consumers. We believe that a 30 day period is necessary for retail outlets to turnover over their gasoline supply. Requiring a 30 day turnover period between terminals and retailers/wholesale purchaser consumers is consistent with the current provisions for transitioning to VOC controlled RFG each spring, which require terminals to meet the VOC control standard beginning on May 1 each year, and retailers and wholesale purchaser-consumers to meet the VOC control standard beginning on June 1.

B. Proper E300 Value for the Edge Target Fuel for Use in Complex Model Extrapolation

The Complex Model as described in § 80.45 includes provisions for extrapolations beyond the limits of the data upon which the model was based. The limits of the data define the "allowable range" which represents the range of fuel parameters within which the Complex Model equations are directly applicable, and outside of which extrapolation must be used up to the limits of the model². These extrapolations take the form of intricate equations and a series of conditions for use of those equations. Among other things, the conditions associated with extrapolation direct Complex Model users to determine properties for an "edge target fuel." The edge target fuel is equivalent in all respects to the target fuel, except that no fuel parameters are allowed to exceed the limits of the

allowable range. In effect, the edge target fuel represents the point in the multi-dimensional fuel parameter space where extrapolation begins.

The Complex Model equation for exhaust volatile organic compounds (VOCs) contained in § 80.45(c)(1) includes a single interactive term. This term, the product of E300 and aromatics, necessitates that extrapolations involving E300 include a simultaneous evaluation of the aromatics level of the target fuel. Thus, in paragraph (c)(1)(iv)(C)(6), Complex Model users are directed to determine whether the mathematical phrase $[80.32 + (-.390 \times \text{ARO})]$ is greater or less than 94, and to set the E300 edge target fuel value accordingly. In so doing, users are determining whether the aromatics-dependent E300 extrema (i.e. curve turnover) point falls beyond the limits of the available data in the Complex Model database.

However, the language in paragraph (c)(1)(iv)(C)(6) is misleading. As currently written, the user is directed to set the E300 value of the edge target fuel at 94 vol% whenever the value of the phrase $[80.32 + (0.390 \times \text{ARO})]$ is greater than 94. The Agency's intention, however, was that this step be taken only if the E300 term is being extrapolated. In other words, if the target fuel value for E300 falls below the higher limit for E300 in the allowable range as defined in Table 6, § 80.45(c)(1)(iv), then E300 is not being extrapolated, and the E300 value of the edge target fuel should be equal to the E300 value of the target fuel.

To correct this problem, we proposed to modify the provisions in § 80.45(c)(1)(iv)(C)(6) and § 80.45(c)(1)(iv)(D)(6) to clarify that Complex Model users should only set the E300 value of the edge target fuel equal to 94 if the target fuel value for E300 exceeds the higher limit specified in § 80.45(c)(1)(iv), Table 6.

We previously received no comments on this change. Today's rule proposes to make this change.

IV. RFG Compliance Requirements

A. Clarification of Requirements To Test RFG and RBOB

Section 80.65(e)(1) requires refiners and importers to determine the properties of each batch of RFG that is produced or imported. This determination is required for each parameter relevant to the RFG standards. We previously proposed to modify § 80.65(e)(1) to add language to clarify that this section applies to RBOB as well as to RFG. We also proposed to add a cross reference to § 80.69(a),

which requires the certified properties of RBOB to be the properties of the RBOB subsequent to downstream blending with oxygenate, based on test results of a sample of the RBOB hand blended in the laboratory with the appropriate oxygenate type and amount. We believe the certification of RBOB already is implicit in § 80.65(e), and that refiners and importers have been certifying and reporting the properties of RBOB based on the analysis results of a hand blend. In addition, we proposed to clarify that testing for RVP is necessary only for RFG and RBOB that is designated as VOC controlled, because RVP test results are relevant only to VOC controlled gasoline (for non-VOC controlled gasoline, the Complex Model uses an RVP value of 8.7 psi regardless of the actual RVP value of the gasoline.) Today's rule also clarifies that the volume as well as the properties of each batch of gasoline must be determined. We received no comments on these clarifications and today's rule again proposes these clarifications.

B. Transfer of Credits

Section 80.67(h)(1)(iv) allows parties to transfer oxygen and benzene credits directly from the party who generates them to the party who uses the credits for compliance purposes. We received several inquiries with regard to whether transfers within the same company are covered under this section. We believe that a party may properly transfer legitimate credits within the company or outside of the company. As a result, we proposed to clarify that credit transfers may be either inter-company or intra-company. We received no comments on this clarification and today's rule again proposes this clarification.

C. Compliance Survey Requirements

1. Method of Computation for Averages in Survey Series

The RFG rule affords refiners the flexibility to comply with the RFG standards on a refinery annual average basis, as opposed to requiring each refinery to comply based on the quality of its gasoline sold in a particular covered area. The RFG surveys are designed to ensure that this flexibility does not result in a covered area receiving gasoline that on average differs in quality from the average gasoline quality that would occur if averaging were required separately for each covered area. The surveys are conducted by an industry association according to a statistical sampling plan approved by EPA and involve sampling

² The allowable range of the model is, in fact, a combination of the limits of the data and additional limitations that may be imposed by the existence of extreme, or curve turnover points.

gasoline from retail outlets. If the gasoline in an area fails to meet standards set forth in the regulations for a particular parameter, the standards for that parameter are made more stringent and the number of surveys that must be conducted in the following year is increased.

Some of the gasoline characteristics evaluated by the survey are chiefly of interest because of their role in causing or contributing to ambient ozone levels. Surveys for these parameters (e.g., VOC surveys) are passed or failed based upon the average of results from a week-long survey. Other parameters (like benzene and toxics) are of concern because of their cumulative effects over a longer period of time. Surveys for these latter characteristics are passed or failed based upon the average of a year-long series of one-week surveys. The revisions to § 80.68 proposed in today's rule relate to how the average of such a series of one-week surveys should be computed.

Under the current regulations, determining the average for each survey series³ involves computation of a simple average⁴ of parameter values from each gasoline sample across all of the samples gathered during the year (without any consideration of which week-long survey the sample was a part). If all of the individual week-long surveys had equal sample sizes, this approach to computation would yield as good a representation of the fuel supply as the timing and distribution of the week-long surveys throughout the year permitted.⁵ Practical considerations involved in the design and conduct of an efficient overall survey operation, though, dictate some substantial variations in sample size among the week-long surveys. One such effect, and probably the most important one, stems from the fact that high-ozone season surveys for ozone precursors must yield a confidence interval on the mean small enough to meet the precision requirements of the regulations (§ 80.68(c)(13)(iii)) for each individual survey. Since practical considerations dictate that surveys for the various

parameters be conducted concurrently (i.e., each gasoline sample is analyzed for all parameters covered by the survey program), this situation results in larger-than-necessary sample sizes in the summer for non-ozone precursor parameters. Outside the summer ozone season there is no need to maintain precision standards for each individual survey, but only for the annual series of such surveys. In the interest of efficiency, the survey manager may be expected to cut back on sample sizes during these times at the beginning and end of the calendar year. As a result, the simple average substantially over-represents summertime gasoline.

An additional reason for altering the prescribed approach to computing averages of series has to do with the weights attached to each sample to handle either lack of pre-survey information about an individual retail outlet's throughput or the situation where an outlet with unusually high throughput is located in a covered area with relatively few outlets and is consequently selected into the sample with certainty. For both situations the sample is not self-weighting and weights must be computed to properly represent the outlet's gallonage in the sample. The current approach, the simple average, requires that such weights be computed two different ways, once for the outlet's inclusion in the week-long survey for ozone-related parameters and then again for the annual average computation for non-ozone-related parameters. The latter set of weights cannot be computed until the year's data collection is complete, leaving some uncertainty up to the end of the year as to the status of survey results in areas where throughput data are not available for most outlets. This particular problem is a characteristic of the sample design approach currently being used by the industry survey organization, but that approach or some variant of it is likely to be used in any thorough attempt to meet the survey requirements in the regulations.

Both the distortion and the difficulty in computing weights, as discussed above, can be eliminated by changing the method by which the average of each survey series is computed for a given parameter in a given RFG covered area. Instead of averaging all of the measurements on individual gasoline samples in the survey series, we proposed the following: (1) That the measurements for each week-long survey in an area be averaged, regardless of the sample size, to create a set of means of week-long surveys, and then (2) that all of the resulting individual survey averages for the area be averaged,

themselves, across all of the surveys in the series. This approach removes a significant source of distortion, simplifies calculations, and improves the representativeness of the number that we use to make the important decision on whether the gasoline in an area has passed or failed a survey series. We received no comments on these proposed modifications to § 80.68. Today's rule again proposes these modifications.

2. Clarification of Applicability of Survey Precision Requirements

The intent of the survey precision requirements in § 80.68(c)(13)(iii) is to ensure that errors (in either direction) in survey or survey series pass/fail determinations would be unlikely. Without these requirements survey managers would be able to trade off risk of inappropriate survey failure against survey costs, and the environment would not be protected against the increased risk of errors in the other direction resulting from insufficient sampling.

Therefore, the precision requirements should apply to the body of data that serves as the basis of each pass/fail determination. As currently written, the regulations attach the precision requirements exclusively to individual surveys without making it clear that for certain survey parameters the pass/fail determination is made against a year-long series of surveys rather than against a single survey. As a result, we proposed to clarify the regulations to attach the precision requirements to the appropriate body of data for each determination—to the individual survey where the parameters being evaluated are ozone-related and to the survey series for other parameters. We received no comments on the proposed changes to § 80.68(c)(13)(iii). Today's rule again proposes these changes.

D. Product Transfer Documentation (PTD)

1. Identification of the Gasoline

In the NPRM, we proposed to add a reference to RBOB in § 80.77(c) (requiring the volume of gasoline to be included on PTDs) to clarify that this PTD requirement applies to RBOB as well as to gasoline. We also proposed to delete the reference to conventional gasoline in § 80.77(f) (requiring title or custody PTDs to include identification of the gasoline as conventional or reformulated), since the requirements of § 80.77 do not apply to conventional gasoline (there are separate PTD requirements that apply to conventional gasoline in § 80.106), and we proposed

³ Section 80.68(c)(9)(i)(B) for toxics; (c)(10)(ii) for NO_x; (c)(11) for benzene; and (c)(12) for oxygen.

⁴ In the case of toxics, the computation introduces weights for the season (high-ozone season or outside of high-ozone season) since the statistical model used to compute the emissions is different in the two seasons. The weights substantially correct the overemphasis on summer that affects other non-ozone-related parameters, as discussed in the remainder of the text.

⁵ While the design for each of the individual week-long surveys is probabilistic, a variety of considerations prevent EPA from distributing the surveys in a perfectly random manner with respect to time. The overall sampling approach for survey series thus departs, to some extent, from a purely probabilistic design.

to add a reference to RBOB in § 80.77(f) since the requirements of § 80.77 do apply to RBOB. In addition, we proposed to delete the reference to RBOB in § 80.77(g)(3), since this section requires parties to identify whether the product contains ethanol, and RBOB, by definition, does not contain oxygenate. We received no comments on these changes and today's rule again proposes these changes. In addition, today's rule proposes to revise § 80.77(i) (listing the PTD requirements for RBOB) to remove the requirement in paragraph (i)(1) to identify RBOB as such on PTDs, since this requirement is now included in § 80.77(f), as indicated above.

2. Elimination of PTD Requirements To Include Registration Numbers

Sections 80.77(j) and 80.106(a)(1)(vi) require, in the case of transferors and transferees who are refiners, importers or oxygenate blenders, that the EPA assigned registration number of those persons be included on the PTDs for RFG and conventional gasoline, respectively. We believe that this requirement may be overly burdensome, particularly downstream of the refiner, importer or oxygenate blender, since such information may not be readily available. We also believe that other information which could identify the refiner, importer or oxygenate blender is likely to be available. As a result, we believe that this requirement has limited value as a means of identifying and tracking the gasoline, and that we will be able to adequately enforce the regulations without this requirement. As a result, we proposed to eliminate the requirement to include registration numbers on PTDs. We previously issued guidance indicating that EPA will not require compliance with this requirement. See *Reformulated Gasoline and Anti-dumping Questions and Answers* (February 21, 1995).

We received favorable comments on the proposal to delete the requirement to include EPA registration numbers on PTDs. Today's rule again proposes this change. Based on the same rationale for eliminating this requirement discussed

above, we are also proposing to eliminate this same requirement under § 80.81(g)(1)(vii) regarding California gasoline produced at a refinery located outside the State of California.

E. Exemption for Gasoline Used for Aviation and Racing Purposes

Section 211(k)(5) of the CAA prohibits the sale or dispensing by any person of conventional gasoline to ultimate consumers in any covered area. This statutory prohibition on the sale or dispensing of conventional gasoline in RFG covered areas is not restricted to gasoline used to fuel motor vehicles, but rather applies to *all* gasoline sold or dispensed within an RFG covered area to *any* consumer, regardless of the use. The prohibition, therefore, includes gasoline sold or dispensed for uses such as in motor vehicles, boats, construction equipment, recreational vehicles, and lawn and garden equipment.

We proposed that persons may be exempted from the prohibitions at § 80.78(a)(1) against distributing, transporting, storing, selling or dispensing aviation and racing gasoline if they clearly identify the gasoline as gasoline not for use in RFG areas. We proposed that the racing vehicle exemption would apply only in the case of vehicles that are used exclusively as racing vehicles in races that are sanctioned by generally recognized race sanctioning bodies.⁶ In addition, the exception would apply only in the case of vehicles that do not meet the definition of "motor vehicle" under Clean Air Act § 216(2) and § 85.1703⁷ and that are not registered or licensed for use on or operated on public roads or highways. The racing vehicle exemption applies to use of racing vehicles during practice and qualifying for, and competition in sanctioned races, and applies to motorcycles and boats used exclusively in sanctioned races.

The exemption for aviation gasoline used to fuel aircraft was proposed for safety considerations. Aviation gasoline must satisfy performance criteria that are relevant to the safe operation of

aircraft, and this safety consideration outweighs the very limited potential for adverse environmental effects from conventional gasoline used in this manner. The exemption for racing gasoline is based on the special performance requirements for true race vehicles and the limited volumes of gasoline involved. We believe that the environmental impact from these exemptions is minimal, and the burden from refusing these exemptions is potentially significant. As a result, we believe the exemptions are warranted under these limited circumstances. See *Alabama Power Company v. Costle*, 636 F.2d 323, 357 (D.C. Cir. 1979). We have allowed these exemptions under guidance previously issued by the Agency. See *Reformulated Gasoline and Anti-dumping Questions and Answers* (January 17, 1995).

We received no comments on the proposal to exempt racing vehicle and aviation gasoline. These provisions are contained in § 80.78(a)(12). Today's rule again proposes these provisions.

F. References to Renewable Oxygenate Requirements

On August 2, 1994, we published regulations that would have required the use of "renewable" oxygenates to meet a portion of the oxygenate standard for RFG. See 59 FR 39290 (August 2, 1994). However, implementation of the renewable oxygenate requirements was stayed effective September 13, 1994, as a result of a legal challenge filed in the United States Court of Appeals for the DC Circuit. 59 FR 60715 (November 28, 1994). The Court of Appeals ultimately held that the renewable oxygenate requirements for RFG are invalid. See *American Petroleum Institute v. EPA*, 52 F.3d 1113 (D.C. Cir. 1995).

In the NPRM, we proposed revisions to the RFG regulations to remove the language relating to the renewable fuels requirement. These revisions, and other references to renewable fuels, are shown in the following table. Today's rule again proposes these revisions.

§ 80.65(d)(2)(vi) (C) through (E)	Paragraphs are deleted because they apply only to renewable oxygenate requirements.
§ 80.81	References to renewable oxygenate requirements at § 80.83 are deleted in paragraphs (c)(2), (c)(5), (c)(6), and (c)(10).
§ 80.83	Current section is deleted because it applies only to renewable oxygenate requirements. A new section 80.83 is being added which provides procedures for handling gasoline treated as blendstock.
§ 80.128(e)(2)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.

⁶ Examples of generally recognized race sanctioning bodies include the National Association for Stock Car Auto Racing, the Sports Car Club of America, the National Hot Rod Association, the American Motorcyclist Association, and the American Power Boat Association.

⁷ Under § 85.1703 a vehicle is a "motor vehicle" if it is self propelled and capable of transporting a person or materials, unless the vehicle meets one or more of the following criteria: (1) A maximum speed of not more than 25 miles per hour; (2) the absence of features customary for street use, such

as a reverse gear, a differential, and required safety features; or (3) the presence of features that render the vehicle highly unsuitable for street use, such as tracks.

§ 80.128(e)(6)	Paragraph is deleted because it applies only to renewable oxygenate requirements.
§ 80.129(a)	Paragraph is revised to delete language that applies only to renewable oxygenate requirements.
§ 80.129(d)(3)(iii)	Paragraph is deleted because it applies only to renewable oxygenate requirements.

G. Butane Blending

Under the RFG and conventional gasoline regulations, the addition of blendstock, including butane, to RFG or RBOB or conventional gasoline constitutes the production of gasoline. As a result, a butane blender is considered to be a refiner, subject to all standards and requirements that apply to refiners under the regulations. These requirements include meeting the standards applicable to RFG and conventional gasoline, sampling and testing each batch of gasoline produced, recordkeeping, and reporting.

Butane is a blendstock that historically has been blended with gasoline, particularly in the wintertime. Butane usually is not blended with gasoline that will be used during the summertime because the increased volatility of gasoline blended with butane could violate the Federal or State volatility standards that apply during that period.

We believe that the requirement that refiners sample and test each batch of gasoline produced is a significant impediment to blending butane. This sampling and testing requirement interferes with butane blending because butane typically arrives at blend terminals and is blended in relatively small quantities. Under the current regulations, a butane blending operation may be required to sample at a frequency that could be restrictive for some parties. As a result, we proposed to allow butane to be blended with conventional gasoline under an alternative sampling and testing option in which compliance would be based on the butane specifications provided by the butane supplier, subject to certain conditions specified in the proposal.

1. Butane Blending With Conventional Gasoline

In the NPRM, we proposed that a butane blender who has documentation from the butane supplier indicating that the butane is of commercial grade (as defined in the regulations) may include the butane in anti-dumping compliance calculations based on the properties specified in the regulations for commercial grade butane. A butane blender that has documentation from the butane supplier indicating that the butane is of non-commercial grade (as defined in the regulations) may include the butane in compliance calculations based on the properties specified in the

regulations for non-commercial grade butane, provided that the butane blender conducts a quality assurance program of sampling and testing to ensure that the butane has the properties specified in the regulations. A party that blends butane into gasoline under this alternative sampling and testing option would continue to be classified as a refiner and would be subject to all other refiner requirements.

When butane is blended into conventional gasoline outside the high ozone season, we believe there is little adverse environmental impact as a result of this sampling and testing option, as long as the butane is of sufficient purity. As a result, we proposed that this alternative sampling and testing option for butane blended with conventional gasoline apply during the period outside the high ozone control period (May 1 through September 15). We have allowed butane to be blended with conventional gasoline in a manner that is consistent with this approach in guidance included in Reformulated Gasoline and Anti-dumping Questions and Answers (October 3, 1994). Our experience has been that this approach facilitates butane blending, and that certification mechanisms are appropriate.

Although we proposed to allow use of this sampling and testing option for the entire period outside the high ozone control period, we requested comment on whether this sampling and testing option also should not apply during the "shoulder periods" immediately preceding and following the ozone control period. Most of the commenters recommended that the proposed flexibility not be disallowed during the shoulder periods. Some commenters indicated that the use of butane to allow optimum control of RVP levels in the shoulder periods would improve performance during these periods. One commenter believed there would be no adverse environmental effect from blending butane with conventional gasoline during the shoulder periods because blending low RVP gasoline with butane is limited by other gasoline specs (e.g., distillation), and because the shoulder periods have lower RVP gasoline from the high ozone period. One commenter, however, believed that butane blending could have a detrimental effect on the environment during the shoulder periods, since refiners start producing low vapor

pressure gasoline well below the summer limit to change over the distribution system by the required dates, and adding butane to the low RVP gasoline in the spring would increase VOCs and slow the system changeover. In the fall, butane blending would effect a more instantaneous increase to the maximum RVP limit, increasing VOCs in this season.

The anti-dumping requirements for conventional gasoline were included in the RFG rule to ensure that overall emissions of exhaust toxics and NO_x will not increase over 1990 exhaust toxics and NO_x emissions. After consideration of all the comments received and upon further analysis by EPA, we believe that, although gasoline blended with butane during the shoulder periods may have a somewhat higher RVP than non-butane blended gasoline, blending butane into conventional gasoline is unlikely to degrade the overall conventional gasoline pool from 1990 gasoline to any significant degree, since butane blending is likely to reduce winter complex model exhaust toxics and NO_x emissions. See "Butane Blending Technical Analysis," Memo to Docket. As a result, today's action again proposes the provisions for blending butane into conventional gasoline as previously proposed, and as currently allowed under the Question and Answer guidance, with no further limitations with regard to the time period in which the flexibility is allowed.⁸

One commenter indicated that, under certain circumstances, a refinery may wish to blend butane into conventional gasoline during the high ozone season, and that this practice should be allowed. The provisions for blending butane into conventional gasoline in today's rule would not prohibit a refiner from blending butane into conventional gasoline during the high ozone season. Butane blending into conventional gasoline may occur during the high ozone season, however, the butane blender must demonstrate, through sampling and testing, that the gasoline blended with the butane meets the volatility standards specified at § 80.27. This would necessitate sampling and

⁸ Note that today's rule regarding the sampling and testing requirements for butane blenders under the RFG and anti-dumping rule does not in any way alter or modify the sampling and testing requirements contained in 40 CFR 80.340 regarding butane blending into gasoline under the gasoline sulfur rule in Subpart H.

testing each batch of the blended gasoline for RVP using the regulatory test method in § 80.46.

One commenter said the frequency of quality assurance sampling and testing for non-commercial grade butane should be one sample for every 500,000 gallons or every three months, whichever is more frequent, instead of one sample for every 50,000 gallons or every three months, as proposed. The commenter indicated this would be consistent with the existing Question and Answer guidance. The guidance requires the frequency of quality control sampling and testing to be one sample for every 65 truckloads or every 17 rail cars of butane, or every three months, whichever is more frequent. EPA estimates that the average truckload contains approximately 8,000 gallons of butane. Under the existing guidance, 65 truckloads would be approximately 500,000 gallons. Therefore, we agree with the commenter and believe that the proposed requirement to sample for every 50,000 gallons was in error. As a result, today's rule would require quality assurance sampling and testing for every 500,000 gallons of butane received, or every three months, whichever is more frequent.

One commenter opposed the additional flexibility for butane blending which allows compliance with the gasoline standards on the basis of the butane specifications provided by the butane supplier with no further obligation to sample and test the finished product. This commenter believes that, in the case of a violation downstream, it would not be known whether the batch was off-spec as received by the butane blender, or whether the butane blender added something other than butane which caused the violation. Although the commenter raises a valid concern, we believe that violations of this nature will be rare, and that the approach in today's action today is adequate to address such violations. First, the annual average exhaust toxics and NO_x emissions performance standards for conventional gasoline are met by the refiner. As discussed above, we believe that adding butane of the purity required by the regulations downstream from the refiner will not result in an increase of the exhaust toxics or NO_x emissions performance of the gasoline. Under the regulations, the butane blender must have documentation of the purity of the butane added, and conduct quality assurance sampling and testing when blending butane that is not of commercial grade. Second, the only downstream standard for conventional gasoline is the summertime RVP

standard. Although butane blending may raise the RVP of the gasoline, under the regulations, a party that blends butane into conventional gasoline during the high ozone season is required to test for RVP to ensure compliance with the RVP standard. In addition, under the current regulations, parties upstream from the facility at which a violation is detected are presumed liable (as well as the facility where the violation was detected). To successfully defend against a presumption of liability, a party must demonstrate that the violation was not caused by him (or his employee or agent). Such demonstration must include a reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another party. See § 80.79(b). Therefore, for violations found downstream from the butane blender, the butane blender would likely be required to demonstrate that another party contaminated the gasoline after it left the butane blending facility.

One commenter recommended that the proposed properties for "non-commercial" grade butane be changed to reflect the conventional gasoline baseline values. As discussed above, the rule provides that a refiner that blends butane for which the refiner has documents from the butane supplier demonstrating that the butane has the properties for non-commercial grade butane may demonstrate compliance based on these properties provided that the refiner conducts a quality assurance sampling and testing program of the butane. We believe that butane must at least be of the quality reflected in the rule for non-commercial grade butane for EPA to be assured, in the absence of every-batch testing, that the butane blending will not result in any environmental degradation.

One commenter suggested that EPA consider not requiring butane blenders to run the Complex Model equations for each batch of butane blended. The provisions for butane blenders contain maximum values for olefins, aromatics, benzene and sulfur for commercial and non-commercial grade butane. In the NPRM, we proposed that butane blender-refiners use these values in compliance calculations. We believe, however, that the Complex Model normally will yield results that are in compliance using the maximum parameter values prescribed in the rule. As a result, today's rule would require batch reporting of the volume and properties of the butane, but does not require parties to calculate emissions using the Complex Model for each batch of butane blended with conventional

gasoline. However, if a refiner wishes to include butane blended with conventional gasoline in the annual average compliance calculations for the refinery, the refiner would be required to calculate the equivalent emissions performance of the butane using the provisions in § 80.101(g)(3). Given the difficulty associated with testing butane, and recognizing that the parameter values prescribed in the rule provide a worst case scenario, the rule also would provide that the parameter values specified in the rule may be used in calculating the equivalent emissions performance under § 80.101(g)(3). A refiner who chooses to include the butane in annual average compliance calculations would be required to include all butane blended during the annual averaging period in compliance calculations.

2. Butane Blending With RFG

In the proposal, we requested comment on whether EPA should allow this sampling and testing option for butane blended with RFG. Several commenters said that butane blending would improve the performance of RFG. One commenter recommended that the sampling and testing flexibility be extended to butane blending with RFG, but be limited to certain periods of the year and certain areas of the country.

At the time the provisions for butane blending were proposed, we were unable to establish with any reasonable degree of certainty whether adding butane to RFG would result in any increase in emissions of toxics or NO_x emissions. Because of the additional level of environmental concern associated with RFG, we believed that the flexibility to demonstrate compliance based on butane specifications provided by the butane supplier rather than on sampling and testing each butane blend should not be extended to RFG in the absence of data indicating that there would be no increase in these emissions. However, based on our recent analysis, we have concluded that, although the increase in RVP associated with butane blending may cause some increase in NO_x emissions, any negative effect on emissions is not likely to be significant enough to cause the gasoline to be in noncompliance with the wintertime RFG emissions standards. See "Butane Blending Technical Analysis," Memo to Docket. As a result, today's action would allow butane to be blended into RFG in the wintertime under the provisions in the rule. The sampling and testing provisions for blending

butane into conventional gasoline and RFG are contained in new § 80.82.⁹

Today's rule does not propose to allow use of this sampling and testing option for blending butane into RFG during the high ozone control period or during the shoulder periods immediately preceding and immediately following the high ozone control period. The increase in RVP associated with butane blending causes an increase of VOC emissions. As a result, blending butane into gasoline that is sold during the ozone control period or during some period prior to the beginning of the control period may cause the gasoline to be in noncompliance with the VOC minimum standard. As discussed above, the RVP increase associated with butane blending may also result in some increase in NO_x emissions. Both VOC and NO_x emissions contribute to higher ozone levels. When the RFG rule was promulgated, it was anticipated there would be ozone benefits during the shoulder periods, as well as during the ozone control period, as a result of the turnover to and from VOC controlled gasoline at the beginning and end of the ozone control period.¹⁰ In many RFG areas, and particularly in areas with warmer climates, ozone may be of some concern during these shoulder periods. Blending butane into RFG could compromise the ozone benefits derived from having lower RVP gasoline in the distribution system before and after the ozone control period. As a result, today's rule would provide that the sampling and testing option for parties who blend butane into RFG applies only to the period October 1 through March 31.

For the reasons discussed above regarding butane blended with conventional gasoline, today's rule does not propose to require parties that blend butane with RFG or RBOB in accordance with the provisions of § 80.82 to calculate emissions using the Complex Model. However, refiners who wish to include gasoline batches produced by blending butane with RFG or RBOB in annual averaging compliance calculations would need to determine compliance with the RFG standards using the Complex Model. As discussed above, today's rule would

provide that the equivalent emissions performance of butane blended with conventional gasoline may be determined using the provisions in § 80.101(g)(3). The provisions in § 80.101(g)(3), however, apply specifically to blendstock blended with conventional gasoline, and are not applicable to blendstock blended with RFG or RBOB. As a result, today's rule proposes to provide that, where butane is blended with RFG or RBOB, and where the refiner wishes to include the butane in annual average compliance calculations, the relaxed sampling and testing approach under § 80.82 may not be used. The emissions performance of gasoline produced by blending butane with RFG or RBOB may be calculated in accordance with the provisions for using previously certified gasoline in § 80.65(i). Although this requires sampling and testing of the previously certified gasoline and the gasoline subsequent to blending the butane, we believe it is necessary to ensure that the integrity of the RFG program will not be compromised where butane is included in a refinery's annual average compliance calculations for RFG or RBOB. A refiner who chooses to include butane blended with RFG or RBOB in annual average compliance calculations would be required to include all butane blended during the annual averaging period in compliance calculations.

Today's rule also proposes to add specific recordkeeping and reporting provisions for refiners who blend butane with RFG or RBOB or conventional gasoline. These provisions represent modest changes to the recordkeeping and reporting requirements for butane blenders. They require retention of documents and reporting of information necessary to verify that the requirements of § 80.82 have been met.

H. Gasoline Treated as Blendstock (GTAB)

Today's rule includes provisions for treating imported gasoline as a blendstock under the RFG rule. These provisions would allow an importer to conduct remedial blending of off-spec imported gasoline. Under the provisions of today's rule, the volume and properties of the imported product, called gasoline treated as blendstock, or GTAB, would not be included in the party's importer compliance calculations, but instead would be included in the party's refinery compliance calculations for the finished product.

Under the RFG and anti-dumping regulations, if imported gasoline is blended with additional blendstock, the

blending constitutes a refinery operation for which all refiner RFG/anti-dumping requirements must be met, including compliance with refinery standards, batch sampling and testing, independent sampling and testing (for RFG), recordkeeping, reporting, and attest engagements. The RFG or anti-dumping standards for such an operation must be met solely on the basis of the blendstocks used, and the imported gasoline which was previously accounted for by the importer may not be included. This is true regardless of whether the blending-refining is conducted by the original importer of the gasoline or by another party. As a result, under the current regulations, it is difficult for importers to conduct remedial blending of imported gasoline that does not meet specifications (i.e., is "off-spec") prior to certification as RFG or conventional gasoline.

In the case of RFG, for example, the importer cannot import off-spec RFG and then add blendstocks to meet RFG specifications, and the gasoline cannot be imported as conventional and converted to RFG after remedial blending. The importer, therefore, must downgrade off-spec RFG to conventional gasoline, which can have significant financial consequences to the importer. A refiner who produces a batch of RFG or conventional gasoline that is off-spec prior to the gasoline leaving the refinery or being fungibly mixed at the refinery, on the other hand, can delay designating the gasoline as a batch of RFG, reblend the batch to correct the off-spec condition, and designate the reblended gasoline as a batch for refinery compliance calculations.

To correct this situation, we proposed provisions which would allow importers to conduct remedial blending of off-spec imported gasoline by treating the imported conventional gasoline or RFG as blendstock. This allowance would be subject to certain requirements and limitations. For example, to prevent the marketing of gasoline that has not been certified, the proposal prohibits GTAB to be sold or transferred by the importer to another company prior to the completion of remedial blending. The company that imports the gasoline and classifies it as GTAB in its importer capacity also must conduct the remedial blending and report the blended gasoline in its refiner capacity. We believe that without this constraint gasoline could be lost in the fungible distribution system without ever having been certified.

In addition, for conventional gasoline standards, which are based on a company's individual baseline, we

⁹ Section 80.82 is currently reserved under the heading "Conventional gasoline marker." At the time the RFG final rule was promulgated, we elected not to include provisions for a conventional gasoline marker requirement, but reserved this section in order to include such provisions at a later date. See 59 FR at 7775 (February 16, 1994). Since we have no current plans to promulgate a requirement for a conventional gasoline marker, we are using this section to include the provisions relating to butane blending.

¹⁰ See 56 FR 31282-3 (August 19, 1997).

proposed to require the company each year to calculate an adjusted refinery compliance baseline for the refinery where the GTAB is used to produce gasoline. This adjusted compliance baseline would be calculated separately each calendar year averaging period in which GTAB is used to produce gasoline, and consist of the volume-weighted combination of the company's importer baseline at the GTAB volume for the year, and the refinery's individual baseline at the refinery's gasoline volume exclusive of GTAB for the year. This requirement is intended to prevent a company with an individual refinery baseline that is less stringent than the company's importer baseline from using the GTAB option as a way to apply the less stringent refinery baseline to imported gasoline.

EPA has allowed use of this GTAB option under guidance included in Reformulated Gasoline and Anti-Dumping Questions and Answers (February 6, 1995). We believe this guidance has been effective in providing importers with flexibility to correct off-spec imported gasoline, and that the conditions and limitations have been effective in preventing compliance difficulties.

We received several favorable comments on the proposal for GTAB. One commenter, however, recommended that EPA eliminate a proposed provision which would prohibit GTAB from being placed in a storage tank containing other gasoline unless the gasoline in the storage tank has the same designations under § 80.65(d) as the gasoline to be produced using the GTAB. The commenter believes that this prohibition was intended to prevent an importer from using conventional gasoline in the production of RFG and from reclassifying RFG with regard to VOC control in violation of § 80.78(a)(1). The commenter believes that this prohibition should be eliminated in light of the greater flexibility given to refiners for using previously certified gasoline (PCG).

The PCG provisions referred to in the comment were proposed finalized on December 28, 2001. 66 FR 67098. These provisions allow a refiner to use PCG in the production of a new batch of gasoline by entering the PCG batch in the refinery's compliance calculations as a negative batch in the category of its original designation. We do not believe that the GTAB provisions are in conflict with the provisions for using PCG. GTAB itself is not considered to be PCG, since it was not previously certified by the importer and included in the importer's compliance calculations.

Instead, as discussed above, the GTAB is treated as a blendstock. In some cases, the PCG provisions may be used in the same blending operation that uses the GTAB approach. In such cases, the importer/refiner would determine the volume and properties of the GTAB and report the GTAB batch in its importer report to EPA, but would not include the volume and properties of the GTAB in its importer compliance calculations. The GTAB could then be put into a storage tank with PCG of a different designation, assuming the volume, properties and designation of the PCG were determined before the products were commingled. The importer/refiner could then blend the GTAB and PCG, with or without other blendstock, to produce a new batch. The PCG volume and properties would be entered as a negative batch in the refinery's compliance calculations in the category of the PCG batch's original designation. The entire batch would then be sampled and tested and included in the refinery's compliance calculations (using the appropriate GTAB equation). Today's action includes language to clarify that the PCG provisions and the GTAB provisions may be used in the same blending operation. However, where the PCG procedures are not used, GTAB may not be placed in a storage tank containing other gasoline unless the other gasoline has the same designations under § 80.65(d).

The commenter also recommended that § 80.83(e) be rewritten to clarify that the provisions for determining an adjusted baseline do not apply to GTAB used to produce RFG after January 1, 1998, since there are no RFG standards based on individual baselines after that date. We agree with the commenter and today's action would change the regulatory language to clarify that the provisions for determining an adjusted baseline do not apply to GTAB used to produce RFG after January 1, 1998.

One commenter recommended that EPA clarify whether importers are required to use their independent lab for GTAB imports, and whether the reports of GTAB should be sent on an annual basis.

We believe the regulations as proposed are clear with regard to both the independent lab requirement and the reporting requirements. Section 80.83(f)(1) requires independent lab sampling and testing for GTAB used to produce RFG. Section 80.83(f)(3) requires any GTAB that is used to produce RFG to be treated as imported RFG for purposes of sampling and testing, which would include the independent lab requirement.

We previously proposed to add provisions to the recordkeeping and reporting requirements for RFG regarding GTAB. These provisions would require refiners and importers to keep records that reflect the physical movement of the GTAB from the point of importation to the point of blending to produce RFG, and require GTAB to be identified as such on quarterly RFG reports. We also proposed similar recordkeeping requirements for GTAB under the anti-dumping regulations for conventional gasoline. We received no negative comments on these provisions and they are again being proposed. The previous proposal, however, did not include a requirement that parties identify GTAB batches on their anti-dumping annual reports. Today's action proposes to include this requirement, which we believe is a logical outgrowth of the previous proposal.

One commenter pointed out that the GTAB provisions as proposed fail to define certain terms in the equations. Today's rule would correct this oversight by including definitions for all terms in the equations.

Today's rule also again proposes the definition of GTAB which was previously proposed. The definition is at § 80.2(f).

Finally, today's rule would add a new § 80.211 to allow the GTAB provisions to be used for purposes of compliance with the gasoline sulfur requirements in Subpart H. The rationale for allowing use of the GTAB provisions under the RFG/anti-dumping regulations also applies to use of the GTAB provisions under the gasoline sulfur regulations. We believe that application of the GTAB provisions to the gasoline sulfur regulations would provide consistency in the fuels regulations regarding the way off-spec imported gasoline may be treated. We believe that this provision is a logical outgrowth of the proposal for use of GTAB under the RFG/anti-dumping regulations.

V. Anti-dumping Requirements

A. Imports of Gasoline by Truck

The requirements that apply to imported gasoline under §§ 80.65 (b) and (c), and 80.101(d) and (i), apply to each batch of imported gasoline regardless of the mode of transportation. These requirements include batch sampling and testing, independent sampling and testing for RFG, record keeping, reporting and attest engagements. Therefore, an importer who imports gasoline into the United States by truck is required to meet these requirements, including sampling and testing for each batch of gasoline. For a

truck importer, a batch could consist of the gasoline contained in the truck if homogeneous, or in each truck compartment if the truck's gasoline is not homogeneous.

We believe that the every-batch requirements may be difficult to meet when gasoline is imported by truck, because of the relatively small batch volumes involved. As a result, we proposed a limited alternative method by which importers could meet the requirements for conventional gasoline that is imported into the United States by truck. This approach is limited to imported conventional gasoline, and does not apply in the case of imported RFG because of the additional level of environmental concern associated with RFG.

The proposed approach was based on the importer meeting the conventional gasoline standards on a per-gallon basis, rather than the current regulatory approach of meeting conventional gasoline standards on average. Per-gallon compliance was proposed so that the importer would not have to sample and test each truck load of imported gasoline, which we believed would be necessary for demonstrating compliance with a standard on average. Under the proposal, the importer instead would be allowed to rely on sampling and testing conducted by the operator of the truck loading terminal to verify that the gasoline meets all conventional gasoline standards that apply to the importer.

Because the terminal operator in most cases would not be subject to United States laws, the proposal contained safeguards intended to ensure that the gasoline in fact meets the applicable standards. Under the proposal, the importer would be required to conduct an independent program of quality assurance sampling and testing of the gasoline dispensed to the importer. This sampling and testing would be at a rate specified in the proposal, and the sampling would be unannounced to the terminal operator. In addition, EPA inspectors would be given access to conduct inspections at the truck loading terminal and at any laboratory where samples collected pursuant to this approach are analyzed.

We have allowed conventional gasoline to be imported by truck in a manner that is consistent with the approach proposed in the NPRM under guidance include in Reformulated Gasoline and Anti-dumping Questions and Answers, August 29, 1994. Our experience has been that this approach facilitates imports of conventional gasoline by truck, and that the sampling and testing requirements are appropriate enforcement safeguards. As a result,

today's rule again proposes the provisions for imports of gasoline by truck as previously proposed, except for the addition of certain provisions as discussed below. The provisions are contained in § 80.101(i)(3).

Two issues regarding this sampling and testing approach for truck importers have arisen since the publication of the NPRM. The first issue involves whether truck importers would be able to meet the Complex Model exhaust toxics and NO_x emissions standards on a per-gallon basis. The Complex Model, which was required to be used for demonstrating compliance with the emissions standards beginning on January 1, 1998, calculates higher emissions for gasoline used in the winter due to the extra emissions that result from cold engine start-up, as compared to emissions calculated for gasoline used in the summer. The annual average exhaust toxics and NO_x standards were established by combining higher winter emissions with relatively lower summer emissions. Importers, therefore, are able to meet conventional gasoline standards on average by offsetting the higher emissions of winter gasoline with the lower emissions of summer gasoline. The issue for truck importers under the current guidance and NPRM, which require compliance on a per-gallon basis, is that gasoline produced during the winter may not meet the emissions standards on a per gallon basis. As a result, we modified the August 29, 1994 guidance, which allows truck importers to fulfill the sampling and testing requirements based on test results from the truck loading terminal, to also allow truck importers of conventional gasoline to comply with the conventional gasoline standards on an annual average basis. See Letter to Gregory M. Scott, Society of Independent Gasoline Marketers of America, from Steven A. Herman, dated January 2, 1998.

Our experience since 1998 has indicated that, under this approach, the quality of gasoline imported by truck meets the anti-dumping standards without environmental detriment, and that this approach is necessary for truck importers to comply with the Complex Model standards. As a result, today's action proposes to include a provision in § 80.101(i)(3) which would allow truck importers of conventional gasoline who use the modified sampling and testing approach to comply with the conventional gasoline standards on an annual average basis.

The second issue involves the requirement that truck importers who rely on test results from the foreign terminal must conduct quality

assurance sampling and testing to verify the terminal's testing. Under the guidance and NPRM, the quality assurance testing may be conducted by either the importer or an independent laboratory. In some instances, however, every-batch sampling and testing is conducted at the terminal by an independent laboratory. In these situations, i.e., where an independent laboratory samples and tests each batch of gasoline at the truck-loading terminal supplying the importer's trucks, we believe that additional quality assurance sampling and testing by the importer or independent laboratory is redundant. As a result, we believe that a truck importer may satisfy the sampling and testing requirements, including the quality assurance requirement, using results from sampling and testing conducted by an independent laboratory at the truck-loading terminal, provided that the sampling and testing is conducted subsequent to each receipt of gasoline into the storage tank supplying the importer's truck, or immediately prior to each transfer of gasoline into the importer's truck. See Letter to Kevin J. Kyle, Pal Energy Corporation, from Charles N. Freed, dated April 23, 1998. Today's rule proposes to include provisions in § 80.101(i)(3) to clarify this approach.

We received comments on the original proposal for truck importers from three parties. One commenter said that the quality assurance requirement is particularly difficult for small importer companies and that such companies should be exempt from the quality assurance sampling and testing so long as independent laboratory tests are being performed by other larger import companies and the gasoline is pulled from the same terminal and the same tankage. While we do not believe that an exemption from the quality assurance sampling and testing is warranted, we believe that the provisions in today's rule would not prohibit a smaller truck importer from entering into an arrangement with a larger importer to use test results obtained from an independent laboratory that conducts sampling and testing on the same terminal tankage for the larger importer.

Two commenters recommended that EPA expand the provisions for truck importers to include rail tank cars. We proposed these provisions specifically for truck importers based on information we had received regarding the particular difficulties that truck importers have conducting every batch sampling and testing due to the small batch sizes transported in tank truck compartments. We believe that every batch sampling and testing does not

impose similar burdens on importers who import gasoline by rail tank cars and the NPRM did not seek notice and comment on these provisions being applied to such importers. As a result, today's rule does not propose to extend the provisions for tank truck importers to importers who import gasoline by rail.

B. Date for Submission of Attest Engagement Reports

Section 80.105(c) requires that attest engagement reports involving conventional gasoline must be submitted by May 30 each year. However, § 80.75(m) requires that attest engagement reports for RFG must be submitted by May 31 each year. This inconsistency in reporting deadlines was inadvertent when these sections were promulgated, and, as a result, we proposed to conform the dates by adopting May 31 as the deadline for submitting conventional gasoline attest reports. We received no comments on this change and it is again being proposed.

VI. Attest Engagements

Under §§ 80.65(h), 80.75(m), and 80.105(c) refiners and importers, and reformulated gasoline oxygenate blenders who achieve compliance on average, are required to commission an audit each year to review compliance with certain requirements of the reformulated gasoline and anti-dumping regulations. The audit requirements are specified in 40 CFR Part 80, Subpart F. Under these regulations, the auditor evaluates compliance with the specified requirements by completing audit procedures, called "agreed upon procedures," that are included in the regulations for each requirement; i.e., the auditor "attests" to the results of the agreed upon procedures. As a result, the overall audit is called an "attest engagement."

In the NPRM, we proposed a number of changes to the attest engagement requirements. Certain of these proposed changes are included in today's rule and are discussed below.

A. Modification To Agree Upon Procedures in §§ 80.128 and 80.129, and Promulgation of Agreed Upon Procedures in §§ 80.133 and 80.134

First, today's rule would amend the attest provisions in Subpart F to include new attest procedures. The agreed upon procedures for refiners and importers currently are specified in § 80.128, and for oxygenate blenders in § 80.129. Since promulgation of these procedures, we received comments from industry, and from auditors who conducted attest

engagements under this program, that the agreed upon procedures in §§ 80.128 and 80.129 should be modified in order to be more efficient. A group of auditors working in this area convened under the auspices of the American Institute of Certified Public Accountants (AICPA) to develop new attest procedures. This group submitted modified attest procedures to EPA in January 1996, and asked EPA to approve these procedures for use. On March 15, 1996, by letter to Ian A. MacKay, AICPA, EPA approved use of the attest procedures AICPA submitted, with certain modifications, under the authority of § 80.128. In the NPRM, EPA proposed to amend the attest provisions in Subpart F to include these modified attest procedures. Today's rule re-proposes these procedures. The modified attest procedures for refiners and importers are contained in § 80.133. The modified attest procedures for oxygenate blenders are contained in § 80.134.

The modified attest procedures do not differ significantly in substance from the procedures in §§ 80.128 and 80.129. The principal difference between the modified attest procedures and the procedures in §§ 80.128 and 80.129 is that the modified procedures include criteria for identifying when certain attest procedures, or categories of attest procedures, are unnecessary for a particular attest engagement. These modified attest procedures have been used successfully by numerous auditors for attest engagements since the 1995 reporting period.

The modified attest procedures submitted by AICPA included certain terms not included in the original procedures. Today's rule proposes definitions for certain of these terms which were previously proposed. These definitions do not change the substance of the original procedures.

We received several comments on the modified attest provisions. One commenter said that § 80.133 lumps importers with refiners even though the items noted in the proposed language do not always apply to importers. The commenter recommends that importer procedures be separately defined and should consider the logistical aspects of terminal operation. Another commenter indicated that the attest provisions are inappropriate in situations where an importer brings GTAB into a terminal used by other refiner/importers.

We understand that importers, including importer-refiners who blend GTAB, may use different tanks at different times, and as a result, inventory reconciliation cannot always be done in the same way it is done by crude oil refiners with fixed tanks.

Therefore, we believe that the inventory reconciliation for importers, including GTAB importer-refiners, can be done with other data, such as Customs records and other commercial documents, if full inventory reconciliation is not available due to non-continuous use of tanks.

One commenter said that the results in § 80.133(h)(3) will not agree due to test variances and oxygenate purity. The commenter recommended that EPA allow the acceptable ranges at § 80.65(e) for this procedure and also to fulfill the requirements at § 80.133(h)(4)(ii)(B). We agree with the comment and are proposing to add a provision to allow the acceptable ranges set forth in the chart at § 80.65(e).

In addition, the commenter recommended that EPA provide an acceptable range for total weight percent oxygen to fulfill the requirements under § 80.133(h)(4)(i), since an oxygenate weight percent of exactly 2.0 would not be likely due to the variables associated with the laboratory testing, ethanol purity and specific gravities. This provision, however, requires the attest auditor to compare only records relating to RBOB for which the refiner designated a specific type and amount of oxygenate to be blended by the oxygenate blender. The auditor must agree the refiner's oversight test results of the type of oxygenate used and the oxygenate content to the instructions for type and amount of oxygenate designated on the product transfer documents for the RBOB. The results must be within the acceptable range for the oxygenate given in § 80.65(e)(2)(i). This provision does not require the auditor to compare results of oxygenate weight percent testing. A range for total weight percent oxygen, therefore, is unnecessary and irrelevant to the attest requirements under § 80.133(h)(4)(i). Today's rule would modify the proposed regulatory language to clarify this requirement.

We also proposed that the original attest procedures in §§ 80.128 and 80.129 would continue to be available as alternatives to the proposed attest procedures prior to the 1998 reporting period, and that the attest procedures in §§ 80.133 and 80.134 would be required for subsequent reporting periods. We proposed to phase out the original attest procedures because we believed the modified attest procedures are superior and ultimately should be used for all attest engagements. In addition, we believed that oversight of the attest requirement, including reviews of attest reports, would be more efficient if all attest engagements were based on the same agreed upon procedures. We

proposed that during the period when both the original and the modified attest procedures are available, parties would be required to use either the original attest procedures for refiners and importers under § 80.128 in its entirety, or the modified attest procedures for refiners and importers under § 80.133 in its entirety. A party would not be allowed to use a mixture of attest procedures from § 80.128 and § 80.133. Similarly, an oxygenate blender would be required to use the attest procedures in § 80.129 or in § 80.134, and could not mix attest procedures from both sections. The reason for this constraint is that the different attest procedure sections contain different requirements that are organized differently, and, at least in part, the logic of the sections would be lost if these sections are not completed in their entirety.

We received no negative comments on the proposal to phase out the old attest procedures. We continue to believe it is appropriate to phase out the original procedures. As a result, today's rule proposes to allow use of the attest procedures at §§ 80.128 and 80.129 as alternatives to the procedures at §§ 80.133 and 80.134 through the attest for the 2005 reporting period. Beginning with the attest engagements for the 2006 reporting period, only the attest procedures at §§ 80.133 and 80.134 may be used.

Section 80.125 contains the general requirement for attest audits. Today's rule again proposes modifications to § 80.125, which would require use of the new attest procedures in §§ 80.133 and 80.134, and allow the use of §§ 80.128 and 80.129 as alternatives until 2006.

B. Attest Procedures for GTAB, Previously Certified Gasoline (PCG), Truck Importers and Butane Blenders

As discussed above, today's rule would finalize procedures by which importers may treat imported gasoline as blendstock (GTAB) (§ 80.83), modified sampling and testing procedures for importers who import conventional gasoline by truck (§ 80.101(i)(3)), and procedures for butane blenders (§ 80.101(i)(4)). As a result, we are also proposing attest procedures that would apply in the case of parties who utilize these options. These attest procedures follow the general model of the attest procedures included in §§ 80.128, 80.129, 80.133 and 80.134.¹¹

One commenter said that inventory accounting records usually distinguish only between conventional gasoline and RFG, and do not distinguish between imports and domestic receipts or GTAB, unfinished gasoline, etc. As a result, these records cannot be used as an independent verification of the total import volume, total GTAB, etc. The commenter recommended that EPA allow the use of other documents to reconcile under § 80.133(a)(1). This commenter also recommended that EPA add "or tank containing blendstock" to § 80.131(a)(3)(iii), since the refiner/importer may discharge GTAB to a blending tank containing blendstocks. We agree with the comments and have proposed to modify § 80.131(a)(1) of the GTAB attest section to allow the use of alternative documents to agree the volumes if the yield accounting documents are not sufficient. We have also proposed to modify § 80.131(a)(3)(iii) to include the phrase "or tank containing blendstock." In addition, today's rule would add a provision to the attest requirements for PCG which parallels § 80.131(a)(1), including the change discussed above. This provision, which was proposed and received no negative comments, was inadvertently omitted from attest requirements in the final PCG rule.

Today's rule also again proposes a provision in § 80.125 which reflects the requirement for GTAB attest engagements, with a modification which adds the requirement for attest engagements for truck importers, PCG and butane blenders.

VII. Public Participation

We solicited comments on the need to take the actions proposed in the July 11, 1997 NPRM, including the actions in today's proposal. We reviewed and considered all written comments on these changes to the RFG and conventional gasoline regulations. All comments received by EPA are located in the EPA Air Docket, Docket A-97-03 (See **ADDRESSES**).

VIII. 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 rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed 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 Request (ICR) document prepared by EPA has been assigned EPA ICR number 1591.16.

This proposed rule would make certain revisions to the RFG and conventional gasoline regulations which provide regulated parties with additional flexibility to comply with the regulations. Some of the revisions in today's action would lessen the information collection burdens on certain regulated parties; for example, the rule reduces the sampling and testing requirements for importers who import gasoline by truck. Most of the revisions in today's action would not result in any additional reporting or recordkeeping burdens. Some of the provisions that provide additional flexibility for regulated parties necessitate modest recordkeeping and reporting requirements.

The estimated total annual hour burden on industry for this rulemaking is approximately 1398 hours. This estimate is based on an average of 1 hour per respondent × 40 respondents for GTAB recordkeeping and reporting, 33.40 hours per respondent × 40 respondents for GTAB sampling and testing, and 1.08 hours per respondent × 20 respondents for butane blending recordkeeping and reporting. The

¹¹ On December 28, 2001, we finalized procedures for using previously certified gasoline (PCG), and related attest procedures for PCG. 66 FR 67098. These attest procedures currently are contained in

§ 80.131. Today's rule rennumbers these PCG attest procedures in § 80.131 and adds the attest provisions for GTAB, truck importers and butane blenders. The substance of the attest provisions for PCG is unchanged.

estimated total annual cost burden on industry for this rulemaking is \$83,860. This estimate is based on an annual cost of \$60 per respondent $\times$ 40 respondents for GTAB recordkeeping and reporting, \$2,004 per respondent $\times$ 40 respondents for GTAB sampling and testing, and \$65 per respondent $\times$ 20 respondents for butane blending recordkeeping and reporting.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number OAR-2003-0019. Submit any comments related to the ICR for this proposed rule to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 15, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by January 17, 2006. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The RFA generally requires an agency to prepare a regulatory flexibility

analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure 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 that has not more than 1,500 employees (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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule involves technical corrections, clarifications and codification of certain Agency guidance intended to promote successful implementation of the requirements for reformulated and conventional gasoline and does not include additional regulatory requirements on small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 proposed 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. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This rule applies only to gasoline refiners, importers, blenders and marketers.

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 proposed 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. The rule proposes certain technical and minor changes to the RFG rule, clarifies provisions, and codifies certain guidance previously issued by the Agency. Thus, Executive Order 13132 does not apply to this proposed 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.” This proposed rule does not have tribal implications as specified in Executive Order 13175. This rule applies to gasoline refiners, importers, blenders and marketers. Today’s rule proposes to modify the Federal RFG and conventional gasoline requirements, 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 section 5–501 of the Order has

the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it 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 proposed rule is not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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 action does not involve any new technical standards. 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).

IX. Statutory Provisions and Legal Authority

Statutory authority for today’s proposed rule comes from sections 211(c) and 211(k) of the CAA (42 U.S.C. 7545(c) and (k)). Section 211(c) allows EPA to regulate fuels that contribute to air pollution which endangers public health or welfare, or which impairs emission control equipment. Section 211(k) prescribes requirements for RFG and conventional gasoline and requires EPA to promulgate regulations establishing these requirements. Additional support for the procedural aspects of the fuels controls in today’s rule comes from sections 114(a) and 301(a) of the CAA. Today’s action is a rulemaking subject to the requirements of CAA section 307(d).

List of Subjects in 40 CFR Part 80

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

Dated: December 2, 2005.

Stephen L. Johnson,
Administrator.

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