

challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 6, 2001.

Jane Diamond,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(277)(i)(C)(5) and (c)(280)(i)(B)(1) to read as follows:

§ 52.220 Identification of plan.

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(C) * * *
(277) * * *
(i) * * *
(C) * * *

(5) Bay Area Air Quality Management District Rule 8–52, adopted on July 7, 1999.

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(280) * * *
(i) * * *

(B) El Dorado County Air Pollution Control District

(1) Rule 240, adopted on February 15, 2000.

[FR Doc. 01–17700 Filed 7–16–01; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7011–2]

RIN 2060–Ai98

Regulation of Fuel and Fuel Additives: Reformulated Gasoline Adjustment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action, EPA is adjusting the volatile organic compound (VOC) performance standard under

Phase II of the reformulated gasoline (RFG) program for ethanol RFG blends containing 3.5 weight percent oxygen (10 volume percent ethanol) sold in the Chicago and Milwaukee RFG areas. As discussed in the Notice of Proposed Rulemaking for this adjustment, the EPA is exercising its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts.

This adjustment reduces by 2.0 percentage points (equivalent to an increase in Reid Vapor Pressure (RVP) of approximately 0.3 pounds per square inch (psi)) the summertime VOC performance standard applicable to RFG blends containing 10 volume percent ethanol.

DATES: This rule is effective on July 17, 2001. For additional information on the effective date, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For further information about this rule, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564–9028.

SUPPLEMENTARY INFORMATION: EPA believes that it is appropriate to make today's final rule effective immediately upon today's publication in the **Federal Register**. Because of the limited geographic scope of this rule, and because this rule generally provides for additional flexibility, it should not be problematic for regulated parties to immediately utilize and/or comply with the provision of this rule. Although this final rule includes some new requirements, these requirements are reasonable and necessary to provide the increased flexibility also included in this rule. EPA notes that the general requirement in 5 U.S.C. 553(d) of the Administrative Procedure Act (APA), concerning publication or service of a substantive rule not less than 30 days prior to its effective date, does not apply here. CAA section 307(d)(1) provides that section 553 of the APA does not apply to promulgation or revision of any regulation pertaining to fuels or fuel additives under section 211 of the CAA. Even if section 553(d) of the APA were to apply, there is good cause under section 553(d)(3) to provide less than 30 days notice, for the reasons noted above.

The purpose of the RFG program is to improve air quality in specified areas of the country by requiring reductions in

emissions of ozone-forming volatile organic compounds (VOCs) and oxides of nitrogen (NO_x), and in emissions of toxic air pollutants, through the reformulation of gasoline, pursuant to 211(k) of the Clean Air Act (CAA or the Act), as amended. In the Act, Congress specified that RFG contain at least 2.0 weight percent oxygen. MTBE and ethanol are the two forms of chemical oxygen (or oxygenates) that gasoline producers most commonly use to add oxygen to gasoline. MTBE and ethanol have also been used in conventional gasoline, as octane enhancers, since the 1970s.

In September 1996, EPA awarded a contract to the National Research Council (NRC) to determine whether the reactivity (i.e., ozone-forming capacity) of VOCs can be taken into account in the RFG program without adversely impacting RFG's air quality benefits. In a report released in May 1999, the NRC found significant air quality benefits from RFG and recommended that "the contribution of carbon monoxide (CO) to ozone formation should be recognized in assessments of the effects of RFG." Ozone-Forming Potential of Reformulated Gasoline, National Academy Press, at p. 6 (1999). Mobile sources are a major source of CO emissions, contributing approximately 90 percent of the total CO for Chicago and Milwaukee.

In December 1998, EPA established the Blue Ribbon Panel on Oxygenates in Gasoline, a panel of independent experts, to examine MTBE's performance in gasoline, its presence in water, and alternatives to its use. (While EPA established the panel for reasons that were independent of ethanol issues and the NRC study on RFG, its relevance to this rulemaking is discussed further below.) Panel recommendations made to EPA in July 1999 include:

- Ensure no loss of current air quality benefits from RFG.
- Reduce the use of MTBE, and seek Congressional action to remove the RFG oxygen requirement in the Act.
- Strengthen the nation's water protection programs, including the Underground Storage Tank (UST), Safe Drinking Water, and private well protection programs.

On July 12, 2000, EPA proposed to adjust the VOC performance standard for RFG with 3.5 weight percent oxygen (equivalent to 10 volume percent ethanol) by 1.0 percentage point. As proposed, this adjustment to the VOC performance standard would apply to RFG marketed in all areas of the nation using RFG. As discussed in the Notice of Proposed Rulemaking for this

adjustment (65 FR 42922; July 12, 2000), EPA proposed to exercise its discretion under Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts. The intent of the proposed rule was to increase the flexibility available to refiners to formulate RFG with ethanol while continuing to achieve ozone benefits similar to those of the current Phase II RFG program. Finally, the proposed rule was also intended to implement the NRC recommendation that EPA take into consideration the contribution of CO to ozone formation.¹

In the proposal for the 1.0 percentage point adjustment (equivalent to an increase in RVP of approximately 0.2 psi), we also solicited comment on a recommendation by the Illinois Environmental Protection Agency (IEPA) for a VOC adjustment of 3.7 percentage points (equivalent to an increase in RVP of 0.5 psi). IEPA's recommendation was based in part on a photochemical modeling study conducted for the lower Lake Michigan region.

We received approximately 30 comments on the proposed rule, from states and state associations, refiners and their trade associations, automobile manufacturing associations, oxygenate producer associations, and 200 post cards from citizens of Illinois advocating adoption of the larger adjustment recommended by IEPA. Comments from refiners generally expressed concern that the adjustment as proposed would not provide sufficient flexibility to switch from MTBE to ethanol because the size of the adjustment would not result in a significant cost reduction. Ethanol industry representatives commented that the adjustment should be larger than proposed, specifically endorsing IEPA's recommendation of an adjustment equivalent to a 0.5 psi increase in RVP. States were divided on the proposal which was not restricted to Chicago and Milwaukee; some maintained that the adjustment would have an adverse effect on air quality, while others supported an adjustment.

¹ Additionally, the NPRM discussed reduction and avoidance of increased MTBE as a potential benefit. We recognize, however, that EPA's evaluation of the potential water quality impacts of using MTBE and the strategies available to minimize any such impacts is incomplete. Therefore, we believe that today's rule is appropriate regardless of any effects on MTBE use. We do not specifically rely on MTBE-related benefits as a justification for this adjustment of the VOC performance standard.

Refiners and representatives of the ethanol industry opposed the proposed prohibition of oxygen credit generation for batches of RFG that comply with the adjusted VOC standard and argued that the prohibition might increase the use of MTBE among refiners that would otherwise rely upon such credits. Refiners also opposed the Product Transfer Document requirements, claiming that they would result in higher costs because refiners would need to build more tankage to ensure segregation of VOC adjusted RFG from other RFG.

After evaluating all of the comments, EPA has decided to finalize the VOC adjustment rule, with certain modifications and clarifications. We are limiting application of the adjusted VOC standard to the Chicago and Milwaukee RFG areas where ethanol RFG currently makes up 100 percent of the market. With 100 percent ethanol penetration, there is no mixing of ethanol and non-ethanol RFG in vehicle gas tanks. When gasoline with ethanol is mixed with non-ethanol gasoline in a car's fuel tank (often referred to as "commingling"), the evaporation rate of the mixture is increased, resulting in an increase in emissions of smog-causing pollutants and which is not currently accounted for in the RFG program. In areas like St. Louis, where less than 100 percent of the RFG contains ethanol, the rule as proposed had the potential to cause more ethanol RFG to be made in these mixed RFG areas. If more ethanol RFG is used, the amount of commingling will tend to increase, resulting in an increase in emissions of VOC in addition to those associated with the adjustment to the VOC performance standard itself. To avoid the possibility of any significant VOC increases associated with commingling (which EPA has not fully analyzed or evaluated), the rule as finalized will be restricted to Chicago and Milwaukee. Analysis and quantification of the VOC increases—as well as the existing unaccounted for VOC emissions—associated with commingling would need to be factored into any consideration of a potential adjustment of the RFG performance standard in areas outside of Chicago and Milwaukee. Finally, the adjusted standard is based on photochemical modeling conducted by IEPA that is unique to the Chicago/Milwaukee area (discussed in further detail in Section I.G. below). We do not believe that the results of this modeling can be extended to areas outside this region and we currently lack photochemical modeling similar to IEPA's for other regions that would allow us to make conclusions

about the appropriateness of adjustments to the VOC standard in other RFG areas.

While we are not adopting IEPA's recommended adjustment of 3.7 percentage points, we are increasing the 1.0 percentage point adjustment to 2.0 percentage points (equivalent to an increase in RVP of approximately 0.3 psi). We have concluded that IEPA's approach does not provide sufficient confidence that adverse ozone effects would not occur in the Chicago nonattainment area with the larger adjustment of 3.7 percentage points. We found several deficiencies in the emission calculations which IEPA used in its justification of a 0.5 psi adjustment. These are discussed in detail in Section I.G. below.

Finally, we are not taking or proposing action at this time regarding elimination or adjustment of the 1.5 weight percent oxygen minimum. We are continuing to review the comments received, however, and may consider action in the future.

The contents of today's preamble are listed in the following outline.

- I. Adjusted VOC Standard Under Phase II of the RFG Program
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 - K. Executive Order 13211 (Energy Effects)

I. Adjusted VOC Standard Under Phase II of the RFG Program

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
NAICS 32411	Refiners, importers, oxygenate producers, and oxygenate blenders of reformulated gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.41 dealing specifically with the RFG standards. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Regional Applicability

EPA has determined that a 2.0 percentage point adjustment to the VOC performance standard for 10 percent ethanol RFG (equivalent to an increase in RVP of approximately 0.3 psi) is appropriate in the Chicago and Milwaukee RFG areas. As expressed in our notice of proposed rulemaking (65 FR 42920, 42924, July 12, 2000), EPA's intent is to offset partially the incremental cost associated with the production of ethanol-blended RFG in order to provide additional flexibility to refiners.² EPA is also taking a reasonable approach to ensure that RFG will continue to provide a similar level of overall benefits.

By limiting application of the VOC adjustment to the Chicago and Milwaukee RFG areas, we will provide additional flexibility for fuel providers that currently produce RFG for ethanol blending in the two metropolitan areas

² The ethanol industry originally feared that the increased stringency of the Phase II VOC standard would result in ethanol being "locked out" of the RFG market. Last summer's RFG market proved otherwise, however. This suggests that with economic conditions similar to last summer's the current Phase II standard should not prevent refiners from making RFG with ethanol. More importantly, however, it suggests that an adjustment will offer increased flexibility to refiners. Thus even if market conditions change, we believe an adjustment will provide an incentive to make more RFG with ethanol than without such adjustment. Finally, one refiner commented that the 1 percentage point adjustment would result in that refiner making approximately 5 percent more RFG with ethanol than without the adjustment. We believe, therefore that the 2 percentage point adjustment will allow even greater flexibility to refiners, and will help to prevent increased use of MTBE in these areas.

that use ethanol exclusively in RFG. This flexibility will help to ensure that the refiners that make ethanol RFG are able to continue to do so at reduced cost. Moreover, we are confident based on modeling that Illinois Environmental Protection Agency (IEPA) has conducted (discussed in more detail in Section I.G.) that a 2.0 percentage point adjustment to the VOC standard (equivalent to an RVP increase of approximately 0.3 psi) for these areas will still realize ozone benefits similar to those of the current Phase II program.

Based on our evaluation of the relevant data, however, we have concluded that there is sufficient uncertainty regarding the potential for adverse environmental consequences from a VOC adjustment in RFG areas outside of Chicago and Milwaukee to allow such an adjustment at this time. Specifically, several commenters³ pointed out that in areas where both MTBE-blended and ethanol-blended RFG are used, increased VOC emissions could occur due to the additional commingling of MTBE and ethanol RFG in automobile gasoline tanks. (See the discussion of commingling in section I.C. for further details.) Therefore, commenters suggested that if EPA established a VOC adjustment for RFG areas where ethanol is not the predominant oxygenate (i.e., areas other than Chicago and Milwaukee), EPA would need to consider the emissions impact of commingling. Additionally, several comments suggested that any increase in ethanol use might be accompanied by an increase in evaporative VOC emissions due to increased permeation of ethanol through vehicle fuel system components such as hoses and seals. We agree that any evaluation of the appropriateness of a VOC adjustment should include consideration of commingling and permeation as well as other emission-related impacts. Based on uncertainty regarding the potential emissions impact of mixed ethanol/MTBE pools in RFG areas outside of Chicago and Milwaukee, we are unable to conclude at this time that a VOC adjustment is appropriate for such areas.

In addition, the size of the adjusted VOC standard itself is derived from data specific to the Chicago/Milwaukee region. As discussed in detail in Section I.G. below, the 2.0 percentage point adjustment (equivalent to an RVP increase of 0.3 psi) was based on photochemical modeling that Illinois

³ Commenters were Alliance of Automobile Manufacturers, Oxygenated Fuels Association, American Lung Association, California Air Resources Board, and NESCAUM.

Environmental Protection Agency (IEPA) conducted. The modeling represents the specific lower Lake Michigan region to which the standard will apply. As such, because the modeling results are dependent on the pollutant mix and geographic and meteorological features specific to that region, the photochemical modeling results cannot be extended to other areas.

Overall, we believe that a 2.0 percentage point adjustment to the VOC performance standard (equivalent to an RVP increase of approximately 0.3 psi) is appropriate for RFG with 10 volume percent ethanol sold in the Chicago and Milwaukee RFG area. Because ethanol RFG constitutes virtually 100 percent of the RFG market in the Chicago and Milwaukee area, they are significantly different from other RFG areas. Today's rule is unlikely to change this market share. For this reason, and because EPA is relying on modeling data specific to these areas, we believe it is appropriate to limit the rule to Chicago and Milwaukee. (See Section I.C. for a more detailed discussion of commingling.)

Several questions remain regarding the impact that such a VOC performance standard adjustment might have on overall emissions from RFG in the future. Specifically, newer car technology and low sulfur gasoline will tend to lower CO emissions generally, and therefore decrease the amount of CO reduction resulting from the higher oxygen levels associated with RFG containing 10 volume percent ethanol. Also, while it is our expectation that the market share of ethanol-blended RFG in the Chicago and Milwaukee areas will remain at 100 percent, some question exists regarding the future market share of ethanol blends in these areas based in part on future demand for ethanol in other areas of the U.S. and how that might affect supply, prices, and penetration level in the Midwest. Therefore, EPA will continue to evaluate the effect of Tier 2 technology and Tier 2 low sulfur gasoline on CO emissions as well as market conditions with respect to ethanol and MTBE use.

C. Commingling Effects

Several parties commented that, in areas that currently use RFG with MTBE, increases in the use of ethanol-blended RFG associated with the proposed rule would result in an increase of commingling of MTBE and ethanol RFG blends in automobile gasoline tanks. Since the presence of ethanol causes an increase in the volatility of gasoline (as measured by Reid Vapor Pressure or RVP), such additional commingling would

contribute to an increase in VOC emissions beyond that associated with the adjustment itself. Some comments raised this issue, and pointed out that our estimates of VOC emission increases resulting from the VOC adjustment should have taken commingling effects into account.

In Chicago and Milwaukee, however, virtually 100 percent of the RFG has been oxygenated with ethanol since 1995, and EPA generally does not expect that pattern to change significantly in the foreseeable future; in fact, one of the outcomes of this rule is to help ensure that this pattern continues, by making ethanol use more cost-effective. EPA believes that this rule will not result in any additional VOC emissions due to commingling in the Chicago and Milwaukee RFG areas.

Given that there may be unaccounted commingling emissions in other areas (unlike in Chicago and Milwaukee), and that EPA has not fully evaluated such areas, we are finalizing the VOC adjustment only for the Chicago and Milwaukee areas.

D. Oxygen Credit Generation for VOC Adjusted RFG

Today's final rule allows refiners to trade oxygen credits that are generated by production of VOC adjusted RFG. EPA proposed to prohibit refiners from generating oxygen credits for adjusted VOC RFG because we believed that trading such credits might result in less overall ozone reduction from the oxygen content requirement than the statute implicitly anticipates. Many comments opposed EPA's proposed prohibition on oxygen credit generation for adjusted VOC RFG, arguing that the prohibition would limit refiner flexibility and could result in increased use of MTBE by refiners that would otherwise rely on oxygen credits. Comments further argued that the emission benefits in the region where RFG containing 3.5 weight percent oxygen is used are not diminished even if the oxygen credits are traded, because such credits are traded to other areas that use predominantly MTBE.

Currently, some RFG contains oxygen in excess of 2.0 weight percent (e.g., most ethanol blends contain 3.5 weight percent oxygen). Such blends provide greater CO reductions than RFG blends with 2.0 percent or lower oxygen. Oxygen trading allows refiners to bank and trade credits for the oxygen content of their RFG above 2.0 by weight (or above 2.1 percent if the refiner complies on average). The refiner may then sell these credits to other refiners that produce RFG with less than 2.0 weight percent oxygen, allowing them to meet

the oxygen content limit. However, no gallon of RFG may contain less than 1.5 weight percent oxygen (subject to EPA raising—or ratcheting—the per gallon minimum if an RFG area fails an annual oxygen content survey). See 40 CFR 80.67. The oxygen credit trading program may result in different CO benefits for different areas of the country; i.e., where oxygen is used at higher rates, RFG provides a greater CO benefit, and where oxygen is used at lower rates, RFG provides less CO benefit. The minimum oxygen requirement, however, limits the potential for differing effects and assures some degree of CO benefit everywhere RFG is used.

The RFG program has not generally accounted for the impact that its various requirements may have on CO emissions. Today's rule is the first rule under the RFG program that attempts to take CO emissions into account. Nonetheless, this rule is not intended to establish a comprehensive mechanism for recognizing the CO benefits of the RFG program.

Conceptually, a limit on the trading of oxygen credits for VOC adjusted RFG might help to ensure that the greater CO benefits from ethanol RFG areas are not used to both offset a VOC increase in the ethanol RFG areas and result in less CO benefits in non-ethanol RFG areas through credit trading. However, this would be, at best, an indirect approach to addressing the issue of a comprehensive accounting for CO. Additionally, such a restriction would not, in fact, have provided any assurance that greater CO reductions would have actually been achieved by non-ethanol blends. That is, refiners wishing to market gasoline with less than 2.0 percent oxygen by weight might simply turn to other sources of oxygen credits.

Moreover, because the actual gasoline oxygen content in a non-ethanol RFG area is not likely to be below 2.0 weight percent for all the gasoline in the area (and if it is, there is already a mechanism in the regulations to address the situation), and because the level cannot fall below 1.5 percent for any gallon of RFG (subject to ratcheting), the reduction in CO benefits for non-ethanol areas (if any) will be small relative to the increase in benefits associated with ethanol RFG. In any event, implementation of today's VOC adjustment, without any restriction on credit generation or trading, will not result in any increase or change in emissions in non-ethanol areas above current levels.

Finally, because oxygen credits are generally used by refiners producing

non-ethanol gasoline sold in Northeast RFG areas, any shortage of credits resulting from a trading restriction is likely to result in an increase in MTBE use in the Northeast, which would run directly contrary to one of the reasons for today's action.

Based on the above considerations, EPA has determined that it is not appropriate at this time to prohibit the generation and trading of oxygen credits for batches of RFG that are subject to the adjusted VOC standard.

E. Segregation

In the proposed rule, we introduced a requirement that refiners identify RFG blendstock for oxygenate blending (RBOB) destined to be used in making adjusted VOC RFG. We also proposed that the Product Transfer Document specify the use of the RBOB. Several comments pointed out that EPA's establishment of VOC adjusted RFG would create additional slates of RFG requiring segregation. Additional tankage for segregation would increase refiner costs and the complexity of gasoline storage and distribution.

Since EPA is not requiring refiners to choose between taking advantage of the adjusted VOC standard and generating oxygen credits, as we proposed, segregation is of minimal importance. EPA expects that refiners providing RFG for the Chicago and Milwaukee markets will produce adjusted VOC RFG. Enforcement of the downstream per-gallon VOC standard in the Chicago and Milwaukee RFG areas will be to the level of the adjusted VOC standard. Mixtures of adjusted VOC RFG with non-adjusted VOC 10 volume percent ethanol RFG will not result in VOC noncompliance, since the non-adjusted standard is stricter. As a result, EPA does not believe that mixing VOC adjusted and non-VOC adjusted RFG together will result in any harmful environmental consequences. For RFG sold in areas outside the Chicago and Milwaukee RFG areas, the downstream per-gallon VOC standard will be enforced to the ordinarily applicable Phase II limit.

For the reasons above, therefore, EPA is not requiring segregation of VOC adjusted RFG from non-VOC adjusted RFG in those areas where the VOC adjustment applies. In the final rule, segregation is not required downstream of the refinery. Refiners must still keep track of the volume of adjusted VOC RFG or RBOB that they produce, but the Product Transfer Document will not track whether RBOB is destined to be used for adjusted VOC gasoline beyond the refinery gate. Instead, we will require refiners to specify on the

Reformulated Gasoline and Anti-Dumping Batch Report that RFG with 10 volume percent ethanol complies with either the current (i.e., non-adjusted) VOC performance standard, or the adjusted standard as "adjusted VOC gasoline" per the fuel certification procedures in 40 CFR 80.40.

F. Effect of Rule on NO_x and Toxics

Some comments stated that the VOC adjustment rule could adversely impact NO_x and toxics overcompliance in the RFG program because RFG areas that switch from MTBE to ethanol may experience increased toxics, mostly attributable to increased acetaldehyde emissions, and increased NO_x, from increased oxygen. EPA does not believe any loss of overcompliance is likely. In December 2000, EPA promulgated a gasoline toxics emission performance standard that will maintain the current level of toxics overcompliance in the RFG program. Additionally, changes in NO_x performance are a function of many fuel properties, particularly sulfur content and olefins. The overall impact of the VOC adjustment on NO_x emissions is highly uncertain given the variety of other fuel parameters such as aromatics, olefins, and other gasoline components that can affect NO_x emissions. Specifically, there is no adequate basis to conclude what the effect on NO_x would be absent information about what impact this rule (or oxygen levels) will have on how refineries reformulate their gasoline for all of the fuel parameters relevant to NO_x. In any event, today's action will not result in an increase in ethanol use in the Chicago and Milwaukee RFG areas above current levels.

G. Consideration of Recommendation of Illinois EPA

As discussed in the Notice of Proposed Rulemaking for this adjustment (65 FR 42922; July 12, 2000), the VOC adjustment is motivated primarily by Section 211(k)(1) of the Clean Air Act which directs EPA, in promulgating emission reduction standards for RFG, to consider the cost of achieving such emission reductions as well as any nonair-quality and other air-quality related health and environmental impacts. We then proposed an adjustment to the VOC performance standard specific to that provision in the Clean Air Act in order to limit cost, but based the adjustment ultimately on a level that we felt achieved ozone air quality benefits similar to those for the Phase II RFG program.

Prior to publication of the Notice of Proposed Rulemaking (NPRM), the

Illinois Environmental Protection Agency (IEPA) submitted to EPA a proposal and supporting analysis which suggested that EPA should allow a VOC adjustment of 3.7 percentage points, approximately equal to an increase in RVP of 0.5 psi, for RFG using 10 percent volume ethanol. (See Documents II-D-4, 5 and 6 in Docket A-99-32.)

Briefly, IEPA's analysis compared the VOC and CO emissions associated with a complying fuel with an RVP of 6.8 psi, and an oxygen content of 2.0 weight percent, to the emissions associated with a fuel having an RVP of 7.3, representing an increase in RVP of 0.5 psi, and an oxygen content of 3.5 weight percent. IEPA concluded that the ozone impact of these two fuels would be identical, and that EPA should therefore provide an adjustment that corresponds to an RVP increase of 0.5 psi.

The IEPA analysis used a combination of urban airshed modeling (see Document II-D-4 in Docket A-99-32), and VOC and CO emission calculations (see Document II-D-6 in Docket A-99-32) to establish the relationship between VOC and CO and its effect on ozone formation. We evaluated IEPA's analysis (see Document II-D-13 in Docket A-99-32) and believe that the photochemical modeling portion of the analysis is generally useful for evaluating the conditions studied in the Chicago area. While the modeling covered only a portion of the Lake Michigan airshed and a single 4-day ozone episode, this portion of the airshed contained projections of significant ozone violation. Also, the episode was fairly typical of ozone episodes in the lower Lake Michigan region inclusive of Milwaukee, based on geographic proximity and the lake-influenced meteorology.

In contrast, we found several deficiencies with IEPA's emission calculations⁴ which were used in their justification of a 0.5 psi adjustment. Specifically, the motor vehicle VOC emission rates were taken from the EPA Complex Model and represent emissions from solely 1990 model year

⁴ IEPA compared the emissions (expressed in mg/mi) of a "complying fuel" (assumed to have an RVP of 6.8 psi and 2.0 weight percent oxygen; other parameters are described in Document II-D-6 in Docket A-99-32) with an alternative fuel consisting of a 7.3 psi RVP and 3.5 weight percent oxygen, with the other parameters defined for the complying fuel held constant). IEPA calculated the ozone impact from the "complying fuel" versus the 7.3 psi fuel using a relationship of ozone forming potential between CO and VOC derived from photochemical modeling. Using this technique, IEPA calculated that the ozone capacity of complying fuel is 4,289 mg ozone/mi and the ozone capacity of the 7.3 psi fuel with accompanying CO reductions due to the 3.5 weight percent oxygen would be 4,291 mg ozone/mi—a comparable amount.

vehicles rather than those of the in-use fleet post-2000. IEPA then obtained the emission factor for CO by multiplying the Complex Model-derived VOC emission factor by a ratio of nationwide CO to VOC emissions for onroad vehicles, taken from the 1997 EPA Emissions Trends report rather than using values contained in the emission inventory for this region. This method is highly inaccurate, in that it represents a blend of emissions in areas with conventional and reformulated gasoline, summer and winter conditions and a wide range of local emission control programs, such as I/M, rather than the specific conditions existing in Chicago during the ozone episodes. Finally, IEPA's estimate of a 10 percent reduction in CO due to 10 volume percent ethanol in RFG relative to the required 2.1 weight percent oxygen is overstated; using draft MOBILE6 methodology,⁵ we estimate a reduction of approximately 7 percent. We therefore found that their approach did not provide adequate technical support for an adjustment to the VOC standard of 3.7 percentage points (0.5 psi). Also, IEPA relied upon the use of relative reactivity factors for exhaust and evaporative VOC emissions. EPA does not support the use of relative reactivity factors, for reasons stated in the preamble of the NPRM. See 65 FR 42924.

While we do not accept IEPA's recommendation for an adjustment equivalent to 0.5 psi, we find that the photochemical modeling that IEPA conducted does reasonably support a larger adjustment to the VOC standard than we originally proposed when more recent information on emissions of CO and VOC from onroad vehicles is used. The photochemical modeling consisted of a four day ozone episode from 1991. IEPA modeled reductions in VOC and CO emissions independently, determining the impact of each on peak ozone during each day. A comparison of the impact of differing levels of VOC and CO emissions on peak ozone during each day showed that, on a mass basis,

⁵ MOBILE is an integrated set of FORTRAN routines for use in the analysis of the air pollution impact of gasoline-fueled and diesel-powered highway mobile sources. MOBILE is used in the preparation of all projection year emission inventories required by the Clean Air Act Amendments of 1990 for non-California areas. MOBILE calculates emission factors for gasoline-fueled light-duty vehicles (LDGVs), light-duty trucks (LDGTs), heavy-duty vehicles (HDGVs), and motorcycles. MOBILE also contains provisions for modeling the impact on emission factors of oxygenated fuels (i.e., gasoline/alcohol and gasoline/ether blends) and of participation in the reformulated gasoline (RFG) program under the 1990 Clean Air Act Amendments.

CO was 4.3 to 8.6 percent as effective in producing ozone as VOC.

At the lower end of this range, the results indicate that for each ton of VOC increase, approximately 23 tons of CO decrease are necessary to maintain ozone levels. At the high end of the range, a 12 ton reduction in CO emissions would be required to compensate for a one ton increase in VOC emissions. As discussed in the Response to Comment Document for this rulemaking (see Document II-B-3 in Docket A-99-32), at the VOC adjustment level of 1.0 percentage point (i.e., an equivalent RVP increase of approximately 0.2 psi), CO emissions would be reduced by 45 tons for each one ton increase in VOC emissions.⁶ We believe that in light of IEPA's photochemical model results, the proposed level of 1.0 percentage point (0.2 psi equivalent increase in RVP) is overly conservative.

The mean value of the CO to VOC ozone forming capacities obtained from IEPA's analysis is 6.8 percent, at which level the minimum ratio of CO reductions to VOC increase needed to maintain ozone levels is 14.7:1. As shown in the above referenced Response to Comment Document for this rulemaking, we determined that the use of RFG with ethanol at 10 volume percent (3.5 weight percent oxygen) in these areas can generally be expected to reduce emissions of CO (compared to RFG with 2.0 weight percent oxygen) by approximately 15 tons for every 1 ton increase in VOC emissions associated

with a VOC adjustment of 2.0 percentage points (i.e., the equivalent RVP increase of 0.3 psi).

Significantly, the modeled day producing the ratio of 15:1 yielded the highest ozone concentration of the four days modeled. Because the highest ozone concentration is associated with the 15:1 ratio, adjustments based on lower ratios (i.e., 12:1 and 13:1) should not be used. We believe, therefore, that IEPA's analysis provides reasonable assurance that the 0.3 psi adjustment level is appropriate and would tend to preserve the ozone air quality benefits of the Phase II RFG program.

Finally, we note that the photochemical analysis for Chicago can be said to be generally representative of the Milwaukee area due to the similarity in fuel formulations (100 percent ethanol blended RFG), their geographical proximity (less than 100 miles apart), and the fact that lake effects on local meteorology would be expected to be similarly important in the formation of ozone in these two areas.

Consequently, we are promulgating an adjustment of 2.0 percentage points to the VOC performance standard for 10 percent ethanol RFG sold in the Chicago and Milwaukee RFG areas (RVP equivalent increase of approximately 0.3 psi). We believe that IEPA's photochemical modeling reasonably supports a finding that the level of CO decrease likely to occur in the Chicago and Milwaukee areas will offset the potential ozone air-quality impacts of a 2.0 percentage point adjustment to the VOC performance standard (0.3 psi equivalent RVP increase). As such, we believe the adjustment will result in ozone air quality benefits similar to those generally achieved under Phase II of the RFG program.

H. Impact of Adjusted Standard on SIPs

In the proposal, EPA explained that it believed states should not be required to account in their ROP plans, in the near term, for any potential increase in mass VOC emissions associated with the VOC adjustment, based on uncertainty related to market conditions and the predictability of such emission. We proposed to amend the "Guidance on the Post-1996 Rate-of-Progress Plan and the Attainment Demonstration" to indicate that, for several years, states are not required to evaluate whether their ROP plans would be affected by will be an increase in mass VOC emissions as a result of adjusted VOC gasoline. We also proposed to assess the impact of any mass VOC increases on state attainment of the 3.0 percent rate of progress goal at a later date, when more

data on oxygenate use and distribution and the effect of the VOC adjustment are available. No comments were received on the appropriateness of this approach, and we will assess the impact of any VOC increases on state attainment of the 3.0 percent rate of progress goal as a component of our continued evaluation of this adjustment.

II. Administrative Requirements

A. Submission to Congress and the Comptroller General

Under 5 U.S.C. 801 (a)(1) (A), 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 report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We 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 the publication of the rule in today's **Federal Register**. This is not a "major rule" as defined by 5 U.S.C. 804 (2).

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (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 entitlement, 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.

The Agency has determined that this regulation results in none of the adverse economic effects set forth in Section 1 of the Order because it generally relaxes the requirements of the RFG program by providing regulated parties with more

⁶ We calculated the ratio of CO decrease to VOC increase for varying adjustments of RVP using the following procedure: Using the MOBILE 5.b model, we calculated VOC emissions for RVP varying from 6.7 to 7.7 psi in increments of 0.1 psi. We multiplied the resulting VOC emission rates (expressed in g/mi) by the respective Vehicle Miles travelled (VMT) estimates for Chicago and Milwaukee to obtain the tons per day VOC emissions for each RVP level in each area. (VMT was obtained from the 1996 inventories of the Illinois Environmental Protection Agency (IEPA) and Wisconsin Department of Natural Resources (DNR), respectively.) Taking 6.7 psi RVP as the baseline, the increase in VOC for each 0.1 psi incremental increase above 6.7 was computed for the two areas. To calculate the CO decrease EPA obtained the baseline CO emission rates at 2.0 weight percent oxygen from the Chicago and Milwaukee inventories (from IEPA and Wisconsin DNR) inventories. We then computed the emission rates for gasoline at 3.5 weight percent oxygen using an equation derived from those in MOBILE 6 and which have undergone peer review. This equation is discussed in further detail in the Response to Comment document for this rulemaking (EPA 420-R-01-017). We then calculated the ratio of CO decrease to VOC increase for the varying RVP values. Since CO is a function of oxygen content, the CO reduction is constant, while the VOC emissions, which are a function of RVP, vary. The emission increases for the Mobile 5b runs as well as the respective ratios of CO decrease to VOC increase are summarized in Table 1 of the Response to Comment document.

flexibility with respect to compliance with the RFG requirements. Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order because it raises novel legal or policy issues. EPA submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. 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." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the agency consults with state and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with state and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of state and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the

requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule provides regulatory relief, by adjusting the VOC performance standard, for refiners that choose to make RFG with 10 volume percent ethanol. As discussed in the preamble, we believe that the increased VOC associated with the adjusted VOC standard should not affect states' ROP plans in the near term, and does not impose any substantial direct effects on the states. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

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

On November 6, 2000, the President issued Executive Order 13175 (65 FR 67249) entitled, "Consultation and Coordination with Indian Tribal Governments." Executive Order 13175 took effect on January 6, 2001, and revokes Executive Order 13084 (Tribal Consultation) as of that date. EPA developed this final rule, however, during the period when Executive Order 13084 was in effect; thus, EPA addressed tribal considerations under Executive Order 13084.

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on

matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's rule does not create a mandate for any tribal governments. This rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action generally relaxes certain RFG requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this final rule.

E. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities. For purposes of assessing the impact of today's rule on small entities, small entities are 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 final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analysis is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. sections 603 and 604. Thus, an agency may conclude that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's rule provides regulatory relief by making the VOC standard for RFG that contains 10 volume percent ethanol used in Chicago and Milwaukee slightly less stringent. This action will provide more flexibility for refiners to

reduce MTBE use by decreasing the cost of ethanol-blended RFG. We have therefore concluded that today's final rule will relieve regulatory burden for all small entities.

F. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document was prepared by EPA (ICR No. 1591.11) and a copy may be obtained from Sandy Farmer by mail at OP Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW; Washington, DC 20460, by e-mail at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the internet at <http://www.epa.gov/icr>.

The action will result in revision of the Reformulated Gasoline and Anti-Dumping Batch Report form (EPA Form 3520-20C) that refiners must complete. The form would be revised to include under Item 4.0 a new product type called "Adjusted VOC gasoline." This revision does not represent significant new reporting requirements, nor a substantial increase in the amount of time spent filling out the form.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, 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 are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

G. 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 final rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. The rule imposes no enforceable duty on any state, local or tribal governments or the private sector. This rule applies to gasoline refiners, blenders and importers that supply RFG areas. Today's action provides regulated parties with more flexibility with respect to compliance with RFG requirements.

H. Executive Order 13045: Children's Health Protection

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 final rule is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. For reasons stated in the preamble, we believe that the adjusted VOC standard for RFG with 10 volume percent ethanol will continue to provide a similar level of ozone benefits to those anticipated from the current standard, and will assure that the Phase II RFG program will continue to achieve the significant environmental benefits that it was designed to provide.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, 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 rule does not involve technical standards, and does not specify the use of technical methods. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Statutory Authority

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

K. Executive Order 13211 (Energy Effects)

This 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."

List of Subjects in 40 CFR Part 80

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

Dated: July 5, 2001.

Christine Todd Whitman,
Administrator.

For the reasons set forth in the preamble, part 80 of title 40, of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

2. Section 80.40 is amended by adding paragraph (c) to read as follows:

§ 80.40 Fuel certification procedures.

* * * * *

(c)(1) "Adjusted VOC gasoline" for purposes of the general requirements in § 80.65(d)(2)(ii), and the certification procedures in this section is gasoline that contains 10 volume percent ethanol, or RBOB intended for blending with 10 volume percent ethanol, that is intended for use in the areas described at § 80.70(f) and (i), and is designated by the refiner as adjusted VOC gasoline subject to the less stringent VOC standards in § 80.41(e) and (f). In order for "adjusted VOC gasoline" to qualify for the regulatory treatment specified in § 80.41(e) and (f), reformulated gasoline must contain denatured, anhydrous ethanol. The concentration of the ethanol, excluding the required denaturing agent, must be at least 9% and no more than 10% (by volume) of the gasoline. The ethanol content of the gasoline shall be determined by use of one of the testing methodologies specified in appendix F to this part.

(2) Refiners may choose not to designate as adjusted VOC gasoline or RBOB that otherwise meets the requirements of paragraph (c)(1) of this section, in which case the more

stringent VOC standards in § 80.41 apply.

(3) For purposes of § 80.78(a)(1)(v), the "Adjusted VOC gasoline" standards under § 80.41 are the applicable VOC emissions performance standards only for adjusted VOC gasoline that is intended for use in or sold for use by an ultimate consumer in the covered areas described at § 80.70(f) and (i). For purposes of § 80.78(a)(1)(v), gasoline designated as adjusted VOC gasoline that is intended for use or that is sold for use by an ultimate consumer in any covered area in VOC-Control Region 2 other than those described at § 80.70(f) and (i), is subject to the VOC performance standards in § 80.41 applicable to all other gasoline designated for VOC-Control Region 2.

3. Section 80.41 is amended by revising paragraphs (e) and (f) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(e) *Phase II complex model per-gallon standards.* The Phase II "complex model" standards for compliance when achieved on a per-gallon basis are as follows:

PHASE II—COMPLEX MODEL PER-GALLON STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	≥27.5
Adjusted VOC gasoline designated for VOC-Control Region 2	≥23.9
All other gasoline designated for VOC-Control Region 2	≥25.9
Toxic air pollutants emissions performance reduction (percent)	≥20.0
NO _x emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥5.5
Gasoline not designated as VOC-controlled	≥0.0
Oxygen content (percent, by weight)	≥2.0
Benzene (percent, by volume)	≤1.00

(f) *Phase II complex model averaged standards.* The Phase II "complex model" standards for compliance when achieved on average are as follows:

PHASE II COMPLEX MODEL AVERAGED STANDARDS

VOC emissions performance reduction (percent):	
Gasoline designated for VOC-Control Region 1	
Standard	≥29.0
Per-Gallon Minimum	≥25.0
Adjusted VOC gasoline designated for VOC-Control Region 2	
Standard	≥25.4
Per-Gallon Minimum	≥21.4
All other gasoline designated for VOC-Control Region 2	
Standard	≥27.4
Per-Gallon Minimum	≥23.4
Toxic air pollutants emissions performance reduction (percent)	≥21.5
NO _x emissions performance reduction (percent):	
Gasoline designated as VOC-controlled	≥6.8
Gasoline not designated as VOC-controlled	≥1.5
Oxygen content (percent, by weight):	
Standard	≥2.1
Per-Gallon Minimum	≥1.5
Benzene (percent, by volume):	
Standard	≤0.95
Per-Gallon Maximum	≤1.30

* * * * *

4. Section 80.65 is amended by revising paragraph (d)(2)(ii) and by removing "[Reserved]" in paragraph (d)(2)(iii), to read as follows:

§ 80.65 General requirements for refiners, importers, and oxygenate blenders.

* * * * *

(d) * * *

(2) * * *

(ii) In the case of gasoline or RBOB designated as VOC-controlled:

(A) Either intended for use in VOC-Control Region 1 or VOC-Control Region 2 (as defined in § 80.71); or

(B) Designated as "adjusted VOC gasoline" (as defined in § 80.40(c)(1));

* * * * *

4. Section 80.67 is amended by revising paragraph (g)(1) to read as follows:

§ 80.67 Compliance on average.

* * * * *

(g) * * *

(1)(i)(A) The compliance total using the following formula:

$$\text{COMPLIANCE TOTAL} = \left(\sum_{i=1}^n V_i \right) \times \text{std}$$

Where:

V_i = the volume in gallons of gasoline batch i .
std = the standard for the parameter being evaluated.

n = the number of batches of gasoline produced or imported during the averaging period.

(B) For computation of the VOC performance standard compliance total, Std for each VOC control region is determined by the following formula:

$$\text{Std} = \frac{\text{Std}_u \times \sum_{i=1}^{n_u} VU_i + \text{Std}_a \times \sum_{i=1}^{n_a} VA_i}{\sum_{i=1}^{n_u} VU_i + \sum_{i=1}^{n_a} VA_i}$$

Where, for gasoline and RBOB designated for that VOC control region:

Std = the value to be used in the compliance total formula.

Std_u = the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB not designated for compliance with the adjusted VOC gasoline standard.

Std_a = the averaged VOC emissions performance reduction standard applicable to reformulated gasoline and RBOB designated for compliance with the adjusted VOC gasoline standard.

VU_i = the volume of batch i not designated for compliance with the adjusted VOC gasoline standard.

VA_i = the volume of batch i designated for compliance with the adjusted VOC gasoline standard.

n_u = the number of batches produced or imported and not designated for compliance with the adjusted VOC gasoline standard.

n_a = the number of batches produced or imported and designated for compliance with the adjusted VOC gasoline standard.

(C) The actual total using the following formula:

$$\text{ACTUAL TOTAL} = \sum_{i=1}^n (V_i \times \text{parm}_i)$$

Where:

V_i = the volume in gallons of gasoline batch i .
parm_i = the parameter value of gasoline batch i .

n = the number of batches of gasoline produced or imported during the averaging period.

(ii) [Reserved]

* * * * *

5. Section 80.68 is amended by removing the period at the end of paragraph (c)(8)(ii)(B) and adding in its place a semicolon and by adding paragraph (c)(8)(ii)(C) to read as follows:

§ 80.68 Compliance surveys.

* * * * *

(c) * * *

(8) * * *

(ii) * * *

(C) For adjusted VOC gasoline sold in the covered areas described at § 80.70(f) and (i), the covered area shall have failed the complex model VOC survey if the VOC emissions reduction percentage average of all survey samples is less than the weighted average of the applicable per-gallon standards for VOC emissions reduction calculated according to the following formula:

$$\text{WSTD} = \frac{\text{VOCU} \times n_u + \text{VOCA} \times n_a}{n}$$

Where:

WSTD = Weighted average of the applicable per-gallon VOC standards.

VOCU = Per gallon VOC standard applicable in the covered area to RFG containing less than 10 percent ethanol by volume.

VOCA = Per gallon VOC standard applicable in the covered area to RFG containing 10 percent ethanol by volume.

n_u = Number of samples in the VOC survey with oxygen content less than 3.5 percent by weight.

n_a = Number of samples in the VOC survey with oxygen content equal to or greater than 3.5 percent by weight.

n = Total number of samples in the VOC survey.

* * * * *

6. Section 80.69 is amended by revising the introductory text to read as follows:

§ 80.69 Requirements for downstream oxygenate blending.

The requirements of this section apply to all reformulated gasoline blendstock for oxygenate blending, or RBOB, to which oxygenate is added at any oxygenate blending facility, except that paragraph (a)(7) of this section does not apply to adjusted VOC gasoline as defined in § 80.40(c).

* * * * *

[FR Doc. 01-17563 Filed 7-16-01; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 001121328-1041-02; I.D. 071101C]

Fisheries of the Northeastern United States; Black Sea Bass Fishery; Commercial Quota Harvested for Quarter 3 Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure; Quarter 3 commercial black sea bass fishery.

SUMMARY: NMFS announces that the black sea bass commercial quota available in the quarter 3 period to the coastal states from Maine through North Carolina has been harvested. Commercial vessels may not land black sea bass in these states north of 35°15.3' N. lat. for the remainder of the 2001 quarter 3 quota period (through September 30, 2001). Regulations governing the black sea bass fishery require publication of this notification to advise the coastal states from Maine through North Carolina that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing black sea bass in these states north of 35°15.3' N. lat.

DATES: Effective 0001 hrs local time, July 17, 2001, through 2400 hrs local time, September 30, 2001.

FOR FURTHER INFORMATION CONTACT: Jennifer L. Anderson, Fishery Management Specialist, at (978) 281-9226.

SUPPLEMENTARY INFORMATION:

Regulations governing the black sea bass