

Authority: 42 U.S.C. 7401–7671q.

Subpart D—Arizona

2. Subpart D is amended by adding an undesignated center heading and § 62.640 to read as follows:

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.640 Identification of plan—negative declaration.

Letter from the Arizona Department of Environmental Quality, submitted on March 15, 2001, certifying that there are no small municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

Subpart F—California

3. Subpart F is amended by adding an undesignated center heading and § 62.1125 to read as follows:

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.1125 Identification of plan—negative declaration.

Letter from the California Air Resources Board, submitted on July 20, 2001, certifying that there are no small municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

4. Part 62 is amended by adding Subpart M to read as follows:

Subpart M—Hawaii

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.2850 Identification of plan—negative declaration.

Letter from the State of Hawaii Department of Health, submitted on March 13, 2001, certifying that there are no small municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

Subpart DD—Nevada

5. Subpart DD is amended by adding an undesignated center heading and § 62.7125 to read as follows:

Emissions From Small Existing Municipal Waste Combustion Units

§ 62.7125 Identification of plan—negative declaration.

Letter from the Nevada Division of Environmental Protection, submitted on March 26, 1997, certifying that there are no existing municipal waste combustion units subject to part 60, subpart BBBB, of this chapter.

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BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7122–5]

RIN 2060–AG76

Regulation of Fuels and Fuel Additives: Modifications to Standards and Requirements for Reformulated and Conventional Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: With today's action EPA is finalizing certain proposed modifications to the reformulated gasoline (RFG) and conventional gasoline regulations. Through the 1990 amendments to the Clean Air Act (CAA), Congress directed EPA to publish rules requiring that gasoline sold in certain areas be reformulated to reduce vehicle emissions of toxic and ozone-forming compounds. Congress also directed EPA to establish rules setting anti-dumping standards for non-reformulated, or "conventional" gasoline. EPA published rules for the certification and enforcement of RFG and provisions for conventional gasoline on February 16, 1994 at 59 FR 7716.

Based on experience gained since the promulgation of these regulations, on July 11, 1997, we proposed a variety of revisions to the regulations relating to emissions standards, emissions models, compliance-related requirements and enforcement provisions. In a final rule published on December 31, 1997, we took final action on several of the proposed revisions. Today's action finalizes certain other of the proposed revisions.

The revisions in this final rule involve both RFG and conventional gasoline. This rule finalizes procedures for combining finished gasoline with other products to produce new blends of gasoline. These procedures allow refiners to use conventional gasoline to produce RFG, and to reclassify RFG with regard to VOC classification, activities which were previously prohibited under the regulations. This rule also identifies procedures and requirements regarding the change of service of gasoline storage tanks. The emissions benefits achieved from the RFG and conventional gasoline programs will not be reduced as a result of this final rule.

On May 17, 2001 the National Energy Policy Development Group (NEPD) recommended that EPA "study

opportunities to maintain or improve the environmental benefits of state and local 'boutique' clean fuel programs while exploring ways to increase the flexibility of the fuels distribution infrastructure, improve fungibility, and provide added market liquidity." In response to the NEPD charge, EPA included in its boutique fuel report a series of regulatory actions, including today's action regarding the use of finished gasoline to produce new blends of gasoline, intended to better facilitate seasonal gasoline transition and address gasoline supply and fungibility concerns during periods of low gasoline inventories. We are able to finalize this action now, in advance of other intended EPA actions, because it was previously proposed by EPA. We expect the flexibilities provided via today's action will promote improved availability of fuel meeting the range of environmental and market needs. Action on the other boutique fuel regulatory recommendations targeted at facilitating the transition from winter to summer fuel should be completed in advance of next year's ozone season.

DATES: This rule is effective on December 28, 2001.

ADDRESSES: Materials relevant to this FRM are contained in Public Docket No. A–97–03, Waterside Mall (Room M–1500), Environmental Protection Agency, Air Docket Section, 401 M Street, S.W., Washington, D.C. 20460. Materials relevant to the final rule establishing standards for RFG and anti-dumping standards for conventional gasoline are contained in Public Dockets—A–92–01 and A–92–12, and are incorporated by reference.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Transportation and Regional Programs Division, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W. (6406J), Washington, D.C. 20460; telephone: (202) 564–8989; FAX (202) 565–2085; e-mail mbennett@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action include those involved with the production and importation of gasoline motor fuel.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICSs codes ^a	SIC codes ^b	Examples of potentially regulated parties
Industry	324110	2911	Petroleum refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	

^a North American Industry Classification System (NAICS).

^b Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's notice is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of the preamble, regulatory language and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality (OTAQ) Web site listed below shortly after the fuel is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: <http://www.epa.gov/docs/fedrgrstr/epa-air/>

(Either select desired date or use Search feature)

OTAQ Web Site: <http://www.epa.gov/otaq/>

(Look in "What's New" or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Outline of This Preamble

- I. Previously Certified Gasoline
- II. Changing Service of Gasoline Storage Tanks
- III. Public Participation
- IV. Administrative Requirements
- V. Statutory Provisions and Legal Authority

I. Previously Certified Gasoline

Under 40 CFR 80.65(i) and 80.101(e)(1), refiners are required to exclude from a refinery's compliance calculations gasoline that was not produced at that refinery, and gasoline that was produced at that refinery but was included in the refinery's compliance calculations as part of another gasoline batch. Such gasoline is called "previously certified gasoline," or "PCG." PCG is required to be excluded from compliance calculations to avoid double counting of the gasoline, since PCG is gasoline that was previously accounted for in the refiner's or another refiner's compliance calculations.¹

¹ The regulations at 40 CFR 80.2(d) define previously certified gasoline as "gasoline or RBOB

Where PCG is combined with blendstock to produce a new blend of gasoline, the blendstock must be included in the refinery's compliance calculations, and the PCG must be excluded. The regulations at § 80.101(g)(3) provide a method for calculating the emissions performance of a blendstock which may be used for purposes of including in compliance calculations a blendstock that is blended with PCG. However, this method only applies to previously certified conventional gasoline that is combined with blendstock to produce a new blend of conventional gasoline. The regulations prior to today's rule did not include provisions for using previously certified conventional gasoline to produce RFG, or previously certified RFG to produce new blends of gasoline.

In the Notice of Proposed Rulemaking (NPRM) issued July 11, 1997, we proposed procedures for excluding PCG from compliance calculations which allow previously certified conventional gasoline or previously certified RFG to be used to produce new blends of gasoline, including RFG. Today's rule finalizes these PCG procedures. The provisions at § 80.101(g)(3) for calculating the emissions performance of a blendstock continue to be available. Under certain circumstances, for example, where a refiner includes oxygenate blended at a downstream terminal in the refinery's anti-dumping compliance calculations, the provisions at § 80.101(g)(3) may provide the most appropriate method for excluding PCG from compliance calculations. See 62 FR 37364 (July 11, 1997), and 62 FR 68196 (December 31, 1997), for further discussion of the provisions at § 80.101(g)(3).

Where the PCG procedures finalized in today's rule are followed, refiners may reclassify conventional gasoline as RFG (or reformulated gasoline blendstock for oxygenate blending—"RBOB"), or reclassify RFG with regard to VOC control. Prior to today's final rule, the regulations allowed previously certified RFG to be reclassified as conventional gasoline for use in non-

that previously has been included in a batch for purposes of complying with the standards for reformulated gasoline, conventional gasoline or gasoline sulfur, as appropriate."

RFG areas; however, they prohibited refiners from combining RFG that is used in RFG areas with conventional gasoline, or combining RFG of different VOC designations. See § 80.78. These prohibitions had the effect of prohibiting refiners from upgrading conventional gasoline to RFG, or reclassifying RFG with regard to its VOC control category.

At the time the RFG regulations were promulgated, EPA was concerned that the overall quality of the various gasoline pools may be degraded if refiners were able to reclassify conventional gasoline as RFG or reclassify one category of RFG as another category of RFG. For example, a refiner could produce very "clean" conventional gasoline and include it in its anti-dumping compliance calculations, and then reclassify it as RFG with little or no additional blending, thus enabling the refiner to meet the anti-dumping standards using gasoline that, in fact, is used as RFG. This type of activity could result in a degradation of the quality of the conventional gasoline pool, with associated adverse environmental effects. However, the PCG procedures finalized in today's rule include requirements and limitations which allow conventional gasoline to be reclassified as RFG, and RFG to be reclassified with regard to VOC control, without the potential for adverse environmental effects. As a result, today's final rule revises the prohibitions in § 80.78 to allow parties to combine RFG (or RBOB) with conventional gasoline or blendstock if the PCG procedures are followed.

Under the PCG procedures finalized today, reclassifications using PCG may occur only at refineries, including terminal blending facilities registered as refineries. Refiners are required to determine the volume and properties of each batch of PCG used in the refinery operation along with the designation of the gasoline (RFG, RBOB or conventional), and, for RFG or RBOB, the designation relating to VOC control. The volume and properties of each batch of PCG must be reported to EPA as a negative batch under the same designation as the gasoline as it was received or produced by the refinery. The PCG then may be used by the

refiner as another blendstock, and the gasoline produced using the PCG is sampled and tested and included in compliance calculations without regard to the PCG content. The gasoline produced using the PCG will not necessarily have the same designation as the original PCG batch. As a result, these procedures allow conventional gasoline to be upgraded to RFG, non-VOC controlled RFG to be reclassified as VOC controlled RFG, and RFG VOC Region 2 gasoline to be reclassified as RFG VOC Region 1 gasoline. Where previously certified RFG is blended with other components to produce conventional gasoline, the refiner must reclassify the RFG as conventional gasoline and follow the procedures for using previously certified conventional gasoline to produce new conventional gasoline.

RFG standards may be met on an annual average basis or on a per-gallon

basis. When using PCG, these two situations are handled somewhat differently, as follows:

(1) Where standards are met on average at a refinery, a refiner who uses PCG must meet each average standard based on the net average properties of gasoline in the relevant averaging pool, consisting of the positive volume and properties of all gasoline produced in that averaging pool and the negative volume and properties of all PCG in that averaging pool. Each averaging pool is required to have a net "positive" gasoline volume.

(2) Where a refiner has elected to meet a parameter or emissions performance standard on a per-gallon basis, and a batch of RFG or RBOB is produced using previously certified RFG, for this batch the refiner must meet the more stringent of: (1) The per-gallon standard that applies to the refinery under § 80.41; or (2) the actual value for that parameter or emissions performance

measure for the previously certified RFG used to produce the batch. Where previously certified conventional gasoline is used to produce a batch of RFG or RBOB, the gasoline produced must meet the per-gallon RFG standards under § 80.41.

Under the PCG procedures, any gasoline claimed as PCG must actually be used in a refinery's operation. This is to ensure that the PCG procedures will not cause a degradation in gasoline quality. For example, if a refinery receives a batch of "dirty" conventional gasoline and classifies it as PCG, but never uses it as a component for gasoline production, the PCG would be included as a negative batch in the refinery's compliance calculations and the refinery's conventional gasoline pool would appear "cleaner" than it actually is.

The following table summarizes the PCG approach:

Type of previously certified gasoline (PCG)	Type of gasoline produced	Compliance with standards when using PCG	
		Per-gallon	Average
RFG or RBOB	RFG or RBOB	New batch must meet the more stringent of: § 80.41 per gallon standards; or PCG properties.	Include PCG in RFG compliance calculations as negative batch; include new batch in RFG compliance calculations. All RFG pool volumes for standards must be positive.
Conventional gasoline (CG)	RFG or RBOB	New batch must meet § 80.41 per gallon standards.	Include PCG in CG compliance calculations as negative batch; include new batch in RFG compliance calculations. CG pool volume must be positive.
CG (or RFG) ¹	CG	None	Include PCG in CG compliance calculations as a negative batch; include new batch in CG compliance calculations. CG pool volume must be positive.

¹ Includes RFG used to produce CG, because previously certified RFG may be reclassified ("downgraded") as previously certified CG.

We received a number of favorable comments on the proposal regarding PCG. One commenter, however, said that requiring the net volume of gasoline in a refinery's anti-dumping compliance calculations to be positive creates an inconsistency with those parties who have elected to aggregate refineries for purposes of complying with the anti-dumping standards. We agree with the commenter, and today's final rule modifies the proposed regulatory language to clarify that for refiners who have elected to aggregate their refineries for anti-dumping compliance, the requirement for the net volume of gasoline to be positive applies to the anti-dumping compliance calculations of the refiner's aggregation.

Another commenter suggested that EPA clarify that tank heels do not have to be included in the volume accounted for as a negative batch, assuming that proper change of tank service

procedures are followed. In the NPRM, we proposed procedures relating to the change of service of gasoline storage tanks. These procedures are also finalized by today's rule. See § 80.78(a)(10), and Section II of this preamble for a discussion of these procedures. Under these procedures, tank heels are allowed to remain in a tank and may be mixed with products that normally are required to be segregated in a situation where a party is changing the service of a gasoline storage tank. The allowances under these provisions are limited specifically to circumstances where the change of service is for a legitimate operational reason and is not for the purpose of combining categories of gasoline that otherwise must be segregated, or for the purpose of combining gasoline with blendstock. Accordingly, these provisions include specific change-of-service requirements, one of which is

that the volume of product in the tank must be made as low as possible through normal pumping operations before adding product of a new category. Where all of the requirements of § 80.78(a)(10) are met, a refiner is not required to account for the volume of a PCG tank heel.

Where gasoline is produced at a refinery in a blending tank, a tank heel of PCG must be tested and included in the refinery's compliance calculations as a negative batch in the appropriate category for the PCG. However, if the refiner has test results from the prior batch which included the volume of the heel, and no other PCG product is added to the tank, the test results from the prior batch may be used to fulfill the testing requirements for the PCG heel. In situations where other PCG product in addition to the PCG heel may be present in the blending tank, the entire volume of PCG, including the heel, must be

tested and included in the refinery's compliance calculations as a negative batch.

One commenter said that the proposed treatment is appropriate for conventional gasoline that is upgraded at the same refinery where it was originally certified, but not for conventional gasoline that was produced at another refinery. In the latter case, the inclusion of a negative batch in the anti-dumping calculations has the effect of removing a batch of gasoline that was never included in the refiner's pool in the first instance. Where conventional gasoline certified at another refinery is upgraded to RFG or RBOB, the commenter suggested that the negative batch should be applied to the RFG calculations, leaving only the blendstocks combined with it in that refinery's RFG compliance calculations. The commenter said that the proposal as written would make it difficult for refineries that produce close to 100% RFG to upgrade PCG and/or blendstocks from other refineries to RFG, since they may not produce sufficient volumes of conventional gasoline to offset the negative batches. This commenter also suggested that the source of the conventional gasoline (same refinery vs. different refinery) be acknowledged in the negative batch data, which, the commenter believes would preserve the flexibility for all refiners while eliminating the "gaming" that concerns EPA.

As discussed above, the original prohibitions against reclassifying certain products were included in the RFG rule because of a concern that the overall quality of the gasoline pools could be degraded if refiners were able to reclassify conventional gasoline to RFG, or to reclassify certain categories of RFG into other categories of RFG. Therefore, to prevent a degradation of the overall quality of a gasoline pool, we believe that PCG used to produce gasoline of a different category should be included as a negative batch in the refinery's compliance calculations for the category originally designated for the PCG. Although requiring the source of the PCG to be included in the negative batch data may serve to deter persons from using PCG for purposes of "gaming," as the commenter suggested, we believe this alone would not address the problem of degradation of the overall gasoline pool. Unless a refiner is required to include all PCG in compliance calculations as a negative batch, there may be the potential for negative environmental consequences. Moreover, we believe that it would be unreasonable and impractical to require a refiner who sells gasoline that is later

used as PCG by another refiner to adjust its compliance calculations to reflect the other refiner's use of the PCG. As a result, we believe that the most appropriate approach is to require the refiner who uses the PCG to produce gasoline of a different category to include the PCG as a negative batch in the refinery's compliance calculations.

We understand that there may be situations where a refiner is unable to avail itself of the flexibility provided by the PCG provisions because of the limitations on this approach, particularly those refiners who wish to upgrade PCG but who produce little or no gasoline of the same category as the PCG to offset the PCG batches. We are interested in extending the flexibility afforded by today's rule to such refiners if it is possible to devise practical and effective procedures for extending this flexibility without compromising the environmental benefits of the RFG/anti-dumping program. As a result, we are requesting comments on how the flexibility afforded in today's rule can be practically extended to refiners in this situation. If, based on the comments we receive, we are able to determine practical and effective procedures for extending this flexibility, we would adopt those procedures through notice and comment rulemaking. In the meantime, we believe that finalizing the previously proposed procedures for using PCG is appropriate as they will provide industry with additional blending flexibility without compromising environmental goals. We believe this additional flexibility will be beneficial to refiners and may ease potential supply problems, particularly with regard to RFG in the summertime.

Several commenters said that the proposed revision of § 80.78(a)(5), which prohibits the combining of RFG with conventional gasoline or blendstock except where a refiner does so under the requirements specified in § 80.65(i), would have the unintended effect of prohibiting the downgrading of RFG to conventional gasoline. We agree this would be an unintended consequence of the revision of § 80.78(a)(5) as proposed. As a result, § 80.78(a)(5) is being finalized as proposed, except for minor word changes and the addition of language which specifically allows RFG to be combined with conventional gasoline or blendstock if the combined product is designated as conventional gasoline.

To ensure effective enforcement of the RFG and conventional gasoline regulations, today's rule includes recordkeeping requirements applicable to the PCG option which require retention of records demonstrating the

storage and movement of the PCG from the time it is received at the refinery until it is used in the production of gasoline. Today's rule also includes a requirement to submit information relating to PCG batches in compliance reports to EPA. In addition, today's rule includes attest procedures which require the auditor to verify that PCG was used to produce gasoline at the refinery, and that the PCG batch report to EPA is consistent with both the refiner's sampling and testing of the PCG and the PCG product transfer documents when received at the refinery.

The recordkeeping and reporting requirements in today's rule were included in the NPRM in the case of PCG used to produce RFG, but were inadvertently omitted in the NPRM for PCG used to produce conventional gasoline. We believe these recordkeeping and reporting requirements are necessary enforcement tools for tracking the use of PCG for conventional gasoline as well as RFG, and are a logical outgrowth of the PCG proposal. The recordkeeping and reporting requirements for using PCG to produce conventional gasoline are minimal, as they are for RFG, and any burden associated with these requirements would be more than offset by the additional flexibility provided by the PCG provisions. We received no negative comments on the proposed recordkeeping and reporting requirements for RFG producers under the PCG rule, and we have no reason to believe that there would be any unique burdens associated with the recordkeeping and reporting requirements for conventional gasoline producers under the rule. Consideration of the burdens associated with recordkeeping and reporting for conventional gasoline producers as well as for RFG producers who use PCG was included in the ICR for the proposed rule.

As a result, the recordkeeping and reporting provisions relating to PCG used to produce RFG are being finalized as proposed, except that in some cases the provisions have been reworded or reordered slightly from the proposed rule for purposes of clarity. These modifications do not change the substance of the rule as proposed. The recordkeeping and reporting requirements relating to use of PCG to produce conventional gasoline finalized in today's rule mirror the recordkeeping and reporting requirements for PCG used to produce RFG. We received no negative comments on the attest engagement requirements relating to the

PCG provisions, and these requirements being finalized as proposed.

Section 80.340(c) of today's rule provides that the procedures for using PCG may be applied under the gasoline sulfur regulations in Subpart H. We believe that the PCG procedures in today's rule provide an appropriate alternative method to the existing methods in § 80.340 for demonstrating compliance with the sulfur requirements where PCG is used to produce gasoline. Moreover, we believe that this approach is necessary for purposes of regulatory consistency. Under the gasoline sulfur regulations, parties are required to include in their annual averaging sulfur reports batch information as reported under the RFG/anti-dumping regulations. Where the PCG procedures in today's rule are used, the batch reports submitted under the RFG/anti-dumping regulations will reflect the PCG as a negative batch and the batch of gasoline produced using the PCG as a separate new batch. Therefore, where PCG is used, the method of demonstrating compliance under the gasoline sulfur regulations should relate to the batch reports submitted under the RFG/anti-dumping regulations. While this particular approach was not proposed, we believe that the provisions for allowing use of the PCG procedures under the gasoline sulfur regulations are a necessary and logical outgrowth of the proposal for using PCG.

On May 17, 2001, the National Energy Policy Development Group (NEPD) recommended that EPA "study opportunities to maintain or improve the environmental benefits of state and local 'boutique' clean fuel programs while exploring ways to increase the flexibility of the fuels distribution infrastructure, improve fungibility, and provide added market liquidity." In response to the NEPD charge, EPA included in its boutique fuel report a series of regulatory actions, including today's action regarding PCG, intended to better facilitate seasonal gasoline transition and address gasoline supply and fungibility concerns during periods of low gasoline inventories. We are able to finalize the PCG procedures now, in advance of other intended EPA actions, because they were previously proposed by EPA. We expect that the flexibilities provided in today's action will promote improved availability of fuel meeting the range of environmental and market needs. Action on the other boutique fuel regulatory recommendations targeted at facilitating the transition from winter to summer fuel should be completed in advance of next year's ozone season.

II. Changing Service of Gasoline Storage Tanks

Today's rule finalizes procedures for changing the service of gasoline storage tanks. These procedures were originally issued in Question and Answer guidance documents. See Reformulated Gasoline and Anti-Dumping Questions and Answers, November 21, 1994, February 21, 1995. As discussed below, these procedures may be used for tank turnovers during the transition to VOC controlled gasoline in the spring. We are currently assessing other aspects of the regulatory requirements regarding the transition to the VOC control season. If we determine that additional changes to the regulations relating to the VOC transition period are appropriate, they will be addressed in a subsequent **Federal Register** notice.

Section 80.78(a) requires the segregation of several categories of gasoline. Prior to today's final rule, these segregation requirements prohibited the mixing of *any* amount of the gasolines that must be segregated. As a result, if a refiner wishes to change a tank's service, and the old and new gasolines are types that are required to be segregated, the new gasoline may not be added unless the tank is completely free of any amount of the old gasoline. Moreover, under the regulations prior to today's rulemaking, a party who combines *any* volume of blendstock with RFG or conventional gasoline has produced an additional volume of gasoline which constitutes "refining." For any such action, the refiner must meet all standards and requirements that apply to refiners of RFG or conventional gasoline. As a result, if a refiner were to change a gasoline storage tank's service in a manner that results in some volume of blendstocks being mixed with RFG or conventional gasoline, the refiner would be required to meet all of the standards and requirements for that "batch" of gasoline.

We recognize that when many gasoline storage tanks are pumped as low as possible, a residual volume of gasoline or blendstock remains in the tank (called the tank "heel"), and in the terminal's manifolds and pipes that serve the tank. We believe it is very difficult and impractical to eliminate these residual volumes. As a result, we proposed that, under certain conditions and constraints, where a refiner changes the service of a gasoline storage tank, pipe, or manifold for legitimate business reasons (unrelated to any goal of mixing dissimilar gasolines or blendstock), such refiner would be allowed to mix

products that normally must remain segregated.

We also proposed an additional option that would apply to oxygenate blenders. We proposed that this option would be available only where the oxygenate blender is unable to meet the tank transition requirements discussed above. We proposed this option because, in some cases, the requirements for tank transition under the proposed provisions are not feasible without risk that a terminal would have to be closed during at least part of the transition period. For example, where a terminal operator supplies RFG containing MTBE during the summer VOC season, and RFG containing ethanol outside the VOC season, the terminal tank would have to transition from RBOB to RFG in the spring, and from RFG to RBOB in the fall. Under the change-of-service requirements described above, in the spring the storage tank's RBOB content would have to be drawn-down to the minimum level possible through normal pumping operations before any RFG could be added to the tank. However, to meet this requirement, the party may have to take the storage tank out of service if the "minimum level" is reached before new product is available to be transferred into the tank. If the terminal has limited tankage it may be unable to supply gasoline during the time the storage tank remains out of service, which could adversely affect gasoline supplies for some parties. The same difficulty could occur when transitioning from RFG to RBOB in the fall.

To minimize the likelihood that a party would have to take a tank out of service to transition product types, we proposed to allow parties to receive RFG in a tank containing RBOB in the spring prior to the beginning of the VOC season, and receive RBOB in a tank containing RFG in the fall after the end of the VOC season. However, under this option, parties would be required to ensure that all RFG downstream standards, including the oxygen standard, are met during the transition. In addition, the transition must occur outside the period VOC control standards apply at the terminal (i.e., May 1 through September 15 each year). For further discussion, see the Notice of Proposed Rulemaking for this action at 62 FR 37358-59 (July 11, 1997).

We received one comment on the proposal regarding change of service of gasoline storage tanks. The commenter said that the cite to § 80.78(a)(1)(iii) in the change of service provisions appears to be incorrect. We agree with the comment, and the provisions for changing service of gasoline storage

tanks are being finalized as proposed, except that the cite to § 80.78(a)(1)(iii) has been deleted.

III. Public Participation

In the NPRM, we solicited comments on the need to take the actions proposed, including the actions finalized today. We have reviewed and considered all written comments on the provisions in today's rule. Responses to comments are contained in the preamble to this rule. All comments received by EPA are located in the EPA Air Docket, Docket A-97-03 (See **ADDRESSES** section of this preamble). Comments solicited at the end of Section I. of this preamble should be submitted to the address listed in the **ADDRESSES** section of this preamble. Please also submit a copy to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

IV. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "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.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a "significant regulatory action."

B. Compliance With the Regulatory Flexibility Act

We have determined that this rule would not have a significant impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis

in conjunction with this final rule. This rule would not have a significant impact on a substantial number of small entities because it involves optional provisions intended to promote successful implementation of the RFG and anti-dumping requirements and to afford regulated parties with greater flexibility to blend gasoline and implement tank turnovers. As such, this final rule will be beneficial to industry and may have the potential to ease gasoline supply shortages.

C. Paperwork Reduction Act

The information collection requirements related to the provisions finalized today have been submitted for approval to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) was prepared by EPA (ICR No. 1591.12) and a copy may be obtained from Susan Auby, OIC Collection Strategies Division; U.S. Environmental Protection Agency (mail code 2822); 1200 Penn. Ave NW; Washington, DC 20460, or by calling (202) 260-4901. Insert the ICR title and/or OMB control number in any correspondence. Copies may also be downloaded from the Internet at <http://www.epa.gov/icr>.

Under today's final rule, EPA is requiring refiners to keep certain records associated with the provisions for using PCG to produce gasoline. However, EPA believes that this requirement will be met using documents created and kept for commercial business purposes; i.e., documents that show the movement of PCG to blending tanks and volume and parameter measurements. This requirement, therefore, is not expected to impose additional recordkeeping burdens on regulated parties. This final rule also requires refiners to include information regarding PCG batches in their RFG and anti-dumping compliance reports. However, since the required information regarding PCG batches, such as volume and parameter measurements, will be created for commercial business purposes, including this information in the EPA reports is expected to impose only a minimal additional burden on regulated parties. An estimate of the information collection burden is contained in the ICR for this rule.²

²There are no new recordkeeping or reporting requirements included in today's final tank change-over provisions. Any recordkeeping obligations associated with the refining or blending activities, and related sampling, described in the new tank change-over provisions are covered by an existing reformulated gasoline ICR. OMB Control

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 the 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 Chapter 15.

D. Intergovernmental Relations

1. 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 for any single year. Before promulgating a 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 that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an

#2060.0277. Additionally, to the extent that the new tank change-over provisions allow for activities that would otherwise subject a party to regulation as a refiner, the very limited sampling and testing obligations of today's final rule represent a relaxation of the sampling and testing obligations otherwise applicable to refiners, and therefore a relaxation in any potential recordkeeping and reporting obligations.

explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This final rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in this final rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains no federal mandates that may result in expenditures of more than \$100 million to the private sector in any single year. This action provides refiners with optional procedures for blending gasoline and performing tank turnovers. This action, in fact, is expected to reduce the burden on regulated entities by providing them with this additional flexibility. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this rule was developed during the period when Executive Order 13084 was still in force, and so Tribal considerations were addressed 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 officials 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. The requirements for private businesses in today's document would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this document are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. 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 Section 6 of 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.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have federalism implications (i.e., the rules 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.) Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, EPA also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

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. This rule allows industry greater flexibility to blend gasoline components in a manner that will not result in any negative effect on air quality. As a result, the effect of this rule on the states, if any, will be positive in that the blending flexibility afforded by this rule may help to ensure that adequate supplies of gasoline are available, particularly in areas that require RFG. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104-113, directs EPA to use voluntary consensus standards in its regulatory activities unless it 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) 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.

Today's rule includes a provision which requires the testing of gasoline in a storage tank after the service of the tank has been changed. This provision is included in today's rule to ensure that the quality of the gasoline is not compromised through the process of changing the service of the tank. This provision is consistent with the NTTAA since it allows parties to use alternative test methods to fulfill this requirement rather than using the regulatory test methods, provided that the alternative methods are approved by the American Society of Testing and Materials (ASTM), the protocols of the ASTM methods are followed, and the alternative methods are correlated to the regulatory method.

F. 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, section 5-501 of the Order directs the Agency to 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.

This final rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866 and it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. The reformulated gasoline program is designed to reduce vehicle emissions of toxic and ozone-forming substances. This rule will not affect the air quality benefits of the reformulated gasoline program.

G. 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 submitted a report containing this rule and other required information to the U.S. Senate,

the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. 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. Although no assessment is required under Executive Order 13211, we believe that today's rule should help to alleviate energy supply or distribution concerns in certain situations, since the additional flexibility provided to refiners under the rule will help to facilitate seasonal gasoline transitions and address gasoline supply and fungibility problems during periods of low gasoline inventories.

V. Statutory Provisions and Legal Authority

Statutory authority for today's final 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.

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

2. Section 80.65 is amended by revising paragraph (i) to read as follows:

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

* * * * *

(i) *Exclusion of previously certified gasoline.* Any refiner who uses previously certified reformulated or conventional gasoline or RBOB to produce reformulated gasoline or RBOB must exclude the previously certified gasoline for purposes of demonstrating compliance with the standards under § 80.41. This exclusion must be accomplished by the refiner as follows:

(1)(i) Determine the volume and properties of each batch of previously certified gasoline used to produce reformulated gasoline or RBOB using the procedures in paragraph (e)(1) of this section and § 80.66, and the independent analysis requirements in paragraph (f) of this section in the case of previously certified reformulated gasoline.

(ii) In the case of previously certified reformulated gasoline or RBOB determine the emissions performances for toxics and NO_x, and VOC for VOC-controlled gasoline, and the designations for VOC control.

(iii) In the case of previously certified conventional gasoline determine the exhaust toxics and NO_x emissions performances.

(2) Determine the volume and properties, and the emissions performance for toxics and NO_x, and VOC for VOC-controlled gasoline, of any batch of reformulated gasoline or RBOB produced at the refinery using previously certified gasoline and include each batch in the refinery's compliance calculations without regard to the presence of previously certified gasoline in the batch.

(3) In the case of any parameter or emissions performance standard that the refiner has designated for the refinery to meet on a per-gallon basis under paragraph (d)(2)(v) of this section, the per-gallon standard that applies to any batch of reformulated gasoline or RBOB produced by the refinery is as follows:

(i) When using any previously certified reformulated gasoline or RBOB, the more stringent of:

(A) The per-gallon standard that applies to the refinery under § 80.41; or

(B) The most stringent value for that parameter or emissions performance for any previously certified reformulated gasoline or RBOB used to produce the batch.

(ii) When using any previously certified conventional gasoline, the per-gallon standard that applies to the refinery under § 80.41.

(4) In the case of any parameter or emissions performance standard that the refiner has designated for the refinery to meet on average under paragraph (d)(2)(v) of this section, any previously certified gasoline must be excluded from the refinery's compliance calculations as follows:

(i) Where a refiner uses previously certified reformulated gasoline or RBOB to produce reformulated gasoline or RBOB:

(A) The refiner must include the volume and properties of any batch of previously certified reformulated gasoline or RBOB in the refinery's compliance calculations for the standard under § 80.67(g) as a negative batch, by multiplying the term V_i in § 80.67(g)(1)(ii) (i.e., the batch volume) times negative 1; and

(B) The negative batch under paragraph (i)(4)(i)(A) of this section must be included in the averaging categories that correspond to the designation regarding VOC control of the previously certified gasoline batch when received; and

(C) The net volume of gasoline in the refinery's reformulated gasoline compliance calculations must be positive in each of the following categories where the standard is being met on average:

Standard	Gasoline category that must have net positive volume
(1) Oxygen	All RFG ¹ .
(2) Benzene	All RFG and RBOB.
(3) VOC emissions performance.	(i) RFG and RBOB that is VOC-controlled for Region 1. (ii) RFG and RBOB that is VOC-controlled for Region 2.
(4) Toxics emissions performance.	All RFG and RBOB.
(5) NO _x emissions performance.	(i) All RFG and RBOB. (ii) RFG and RBOB that is VOC-controlled.

¹ "RFG" is an abbreviation for reformulated gasoline.

(ii) Where a refiner uses previously certified conventional gasoline to produce reformulated gasoline or RBOB:

(A) The refiner must include the volume and properties of any batch of previously certified conventional gasoline as a negative batch in the refiner's anti-dumping compliance calculations under § 80.101(g) for the refinery, or where applicable, the refiner's aggregation under § 80.101(h); and

(B) The net volume of gasoline in the refiner's anti-dumping compliance

calculations for the refinery, or, where applicable, the refiner's aggregation under § 80.101(h), must be positive.

(5) The refiner must use any previously certified gasoline that the refiner includes as a negative batch under paragraph (i)(4) of this section in its compliance calculations for the refinery, or where appropriate, the refiner's aggregation, as a component in gasoline production during the annual averaging period in which the previously certified gasoline was included as a negative batch in the refiner's compliance calculations.

(6) (i) Any refiner may use the procedures specified in this paragraph (i) to combine previously certified conventional gasoline with reformulated gasoline or RBOB, to reclassify conventional gasoline into reformulated gasoline or RBOB, or to change the designations of reformulated gasoline or RBOB with regard to VOC control.

(ii) The procedures under this section are refinery procedures. Any person who uses the procedures under this section is a refiner who must meet all requirements applicable to refiners under this subpart.

(7) Nothing in this paragraph (i) prevents any party from combining previously certified reformulated gasolines from different sources in a manner that does not violate the prohibitions in § 80.78(a).

3. Section 80.74 is amended by:

- a. Removing the word "and" at the end of paragraph (b)(5).
- b. Removing the period and adding a semicolon and the word "and" at the end of paragraph (b)(6).
- c. Adding paragraph (b)(7).

The addition reads as follows:

§ 80.74 Recordkeeping requirements.

* * * * *

(b) * * *

(7) In the case of any gasoline classified as previously certified gasoline under the terms of § 80.65(i):

(i) Results of the tests to determine the properties and volume of the previously certified gasoline when received at the refinery; and

(ii) Records that reflect the storage and movement of the previously certified gasoline within the refinery to the point the previously certified gasoline is used to produce reformulated gasoline or RBOB.

* * * * *

4. Section 80.75 is amended by:

- a. Removing the word "and" at the end of paragraph (a)(2)(vi).
- b. Removing the period and adding a semicolon and the word "and" to the end of paragraph (a)(2)(vii).

c. Adding paragraph (a)(2)(viii). The addition reads as follows:

§ 80.75 Reporting requirements.

* * * * *

(a) * * *

(2) * * *

(viii) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.65(i), the following information relative to the previously certified gasoline when received at the refinery:

- (A) Identification of the previously certified gasoline as such;
- (B) The batch number assigned by the receiving refinery;
- (C) The date of receipt; and
- (D) The volume, properties and designation of the batch.

* * * * *

5. Section 80.78 is amended by:

- a. Revising paragraphs (a)(5) and (a)(10).
- b. Removing the word "or" at the end of paragraph (a)(7)(i).
- c. Removing the period at the end of paragraph (a)(7)(ii) and adding in its place ";or".
- d. Adding paragraphs (a)(7)(iii) and (a)(11).

The revisions and additions to read as follows:

§ 80.78 Controls and prohibitions on reformulated gasoline.

* * * * *

(a) * * *

(5) No person may combine any reformulated gasoline with any conventional gasoline or blendstock, except that a refiner may do so at a refinery under the requirements specified in § 80.65(i), or if the combined product is designated as conventional gasoline.

* * * * *

(7) * * *

(iii) Under the terms of paragraph (a)(5) of this section.

* * * * *

(10) The prohibitions against combining certain categories of gasoline under paragraphs (a)(5), (a)(7) and (a)(8) of this section do not apply in the case of a party who is changing the type of gasoline stored in a gasoline storage tank or the type of gasoline transported through a gasoline pipe or manifold within a single facility (a gasoline storage tank, pipe, or manifold change of service), or in the case of a change of service that involves mixing gasoline with blendstock, provided that:

(i) The change of service is for a legitimate operational reason and is not for the purpose of combining the categories of gasoline or of combining gasoline with blendstock;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank, pipe or manifold is made as low as possible through normal pumping operations;

(iii) The volume of product of the new category that is added to the tank, pipe or manifold is as large as possible taking into account the availability of product of the new category; and

(iv) In any case where the new category of product is reformulated gasoline, subsequent to adding the gasoline of the new category, a representative sample from the tank, pipe or manifold is collected and analyzed, and such analysis shows compliance with each standard under § 80.41 that is relevant to the new gasoline category. The analysis for each standard must be conducted using the method specified under § 80.46, or using another method that is approved by the American Society of Testing and Materials (ASTM), provided that the protocols of the ASTM method are followed and the alternative method is correlated to the method specified under § 80.46.

(11) The prohibition against combining reformulated gasoline with RBOB under paragraph (a)(8) of this section does not apply in the case of a party who is changing the type of product stored in a tank from which trucks are loaded, from reformulated gasoline to RBOB, or vice versa, provided that:

(i) The change of service requirements described in paragraph (a)(10) of this section cannot be met without taking the storage tank out of service;

(ii) Prior to adding product of the new category the volume of product of the old category in the tank is drawn down to the lowest point which allows trucks to be loaded during the transition;

(iii) The volume of product of the new category that is added to the tank is as large as possible taking into account the availability of product of the new category;

(iv) When transitioning from RBOB to reformulated gasoline:

(A) If the reformulated gasoline in the storage tank has an oxygen content of less than 1.5 wt%, oxygenate must be blended into the reformulated gasoline at the loading rack such that the reformulated gasoline has a minimum oxygen content of 1.5 wt%;

(B) Subsequent to any oxygenate blending, the reformulated gasoline must meet all applicable standards that apply at the terminal; and

(C) Prior to the date the VOC-control standards apply to the terminal the reformulated gasoline in the storage

tank must have an oxygen content of not less than 1.5 wt%;

(v) When transitioning from reformulated gasoline to RBOB:

(A) The oxygen content of the reformulated gasoline produced using the RBOB must be not less than the minimum oxygen amount specified in the RBOB product transfer documents;

(B) Subsequent to any oxygenate blending, the reformulated gasoline produced using the RBOB must meet all applicable standards that apply at the terminal; and

(C) The transition from reformulated gasoline to RBOB may not begin until the date the VOC-control standards no longer apply to the terminal; and

(vi) The party must demonstrate compliance with the requirements specified in paragraphs (a)(11)(iv) and (v) of this section through testing of samples collected from the terminal storage tank and from trucks loaded at the terminal subsequent to each receipt of new product until the transition is complete. The analyses must be conducted using the test method specified under § 80.46, or using another test method that is approved by the American Society of Testing and Materials (ASTM), provided that the protocols of the ASTM method are followed and the alternative method is correlated with the method specified under § 80.46.

* * * * *

6. Section 80.101 is amended by adding paragraph (g)(9) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(g) * * *

(9) *Exclusion of previously certified gasoline and blendstock.* (i) Any refiner who uses previously certified reformulated or conventional gasoline or RBOB, or blendstock that previously has been included in compliance calculations under § 80.102, to produce conventional gasoline at a refinery, must exclude the previously certified gasoline and blendstock for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

(ii) To accomplish the exclusion required in paragraph (g)(9)(i) of this section, the refiner must determine the volume and properties of the previously certified gasoline or previously certified blendstock used at the refinery, and the volume and properties of gasoline produced at the refinery, and use the compliance calculation procedures in paragraphs (g)(9)(iii) and (g)(9)(iv) of this section.

(iii) For each batch of previously certified gasoline or blendstock that is used to produce conventional gasoline the refiner must:

(A) Determine the volume and properties using the procedures in paragraph (i) of this section;

(B) In the case of previously certified gasoline, determine the exhaust toxics and NO_x emissions performance using the summer or winter complex model, as appropriate;

(C) In the case of previously certified blendstock, determine the exhaust toxics and NO_x equivalent emissions performance using the procedures in paragraph (g)(3) of this section;

(D) Include the volume and emissions performance of the previously certified gasoline and/or blendstocks as a negative volume and a negative emissions performance in the refiner's compliance calculations for the refinery, or where applicable, the refiner's aggregation under paragraph (h) of this section, for exhaust toxics and NO_x.

(iv) For each batch of conventional gasoline produced at the refinery using previously certified gasoline or blendstock, the refiner must determine the volume and properties, and exhaust toxics and NO_x emissions performance, and include each batch in the refinery's compliance calculations for exhaust toxics and NO_x without regard to the presence of previously certified gasoline or blendstock in the batch.

(v) The refiner must use any previously certified gasoline that the refiner includes as a negative batch in its compliance calculations for the refinery, or where appropriate, the refiner's aggregation, as a component in gasoline production during the annual averaging period in which the previously certified gasoline was included as a negative batch in the refiner's compliance calculations.

(vi) Notwithstanding the provisions of this paragraph (g)(9), the provisions of paragraph (g)(3) of this section may be used to calculate the exhaust toxics and NO_x emissions performance of a blendstock added to conventional gasoline for purposes of demonstrating compliance with the standards under paragraph (b) of this section.

* * * * *

7. Section 80.104 is amended by adding paragraph (a)(2)(xii) to read as follows:

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(xii) In the case of gasoline classified as previously certified gasoline under

the terms of § 80.101(g)(9), the results of the tests to determine the properties and volume of the previously certified gasoline when received at the refinery and records that reflect the storage and movement of the previously certified gasoline to the point the previously certified gasoline is used to produce conventional gasoline.

* * * * *

8. Section 80.105 is amended by adding paragraph (a)(5)(vi) to read as follows:

§ 80.105 Reporting requirements.

- (a) * * *
- (5) * * *

(vi) In the case of any previously certified gasoline used in a refinery operation under the terms of § 80.101(g)(9), the following information relative to the previously certified gasoline when received at the refinery:

- (A) Identification of the previously certified gasoline as such;
- (B) The batch number assigned by the receiving refinery;
- (C) The date of receipt; and
- (D) The volume, properties and designation of the batch.

* * * * *

9. Section 80.131 is added to Subpart F read as follows:

§ 80.131 Agreed upon attest engagement procedures for previously certified gasoline.

The following are the agreed upon procedures which must be carried out pursuant to the attest engagement requirements of § 80.125 where a refiner uses previously certified gasoline under the provisions of § 80.65(i) and § 80.101(g)(9):

- (a) Obtain a listing of all previously certified gasoline batches reported to EPA by the refiner. Agree the total volume of previously certified gasoline from the listing of previously certified gasoline received to the volume of previously certified gasoline reported to EPA.
- (b) Select a sample, in accordance with the guidelines in § 80.127, from the listing obtained in paragraph (a) of this section, and for each previously certified gasoline batch selected perform the following:
 - (1) Trace the previously certified gasoline batch to the tank activity records. Confirm that the previously certified gasoline was included in a batch of reformulated or conventional gasoline produced at the refinery.
 - (2) Obtain the refiner's laboratory analysis and volume measurement for the previously certified gasoline when received and agree the properties and

volume listed in the corresponding batch report submitted to the EPA to the laboratory analysis and volume measurements.

(3) Obtain the product transfer documents for the previously certified gasoline when received and agree the designations from the product transfer documents to designations in the corresponding batch report submitted to EPA (reformulated gasoline, RBOB or conventional gasoline, and designations regarding VOC control).

10. Section 80.340 is amended by adding paragraph (c) to read as follows:

§ 80.340 What standards and requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

* * * * *

(c) The procedures in §§ 80.65(i) and 80.101(g)(9) may be applied for purposes of demonstrating compliance with the sulfur standards under this subpart.

[FR Doc. 01-31935 Filed 12-27-01; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 257 and 258

[FRL-7122-2]

RIN 2050-AE86

Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because EPA received an adverse comment, we are withdrawing the direct final rule for Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste. We published the direct final rule on October 23, 2001 (66 FR 53535) to expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills in addition to municipal solid waste landfill units. We stated in the direct final rule that if we received any adverse comments by November 23, 2001, we would publish a timely notice of withdrawal in the **Federal Register**. We subsequently received an adverse comment on the direct final rule. We will address those comments in a

subsequent final action based on the parallel proposal also published on October 23, 2001 (66 FR 53566).

DATES: As of December 28, 2001, EPA withdraws the direct final rule published at 66 FR 53535 on October 23, 2001.

FOR FURTHER INFORMATION CONTACT: For general information, call the RCRA Call Center at 1-800-424-9346 or TDD 1-800-553-7672 (hearing impaired). Callers within the Washington Metropolitan Area must dial 703-412-9810 or TDD 703-412-3323 (hearing impaired). The RCRA Call Center is open Monday-Friday, 9 am to 4 pm, Eastern Standard Time. For more information on specific aspects of this withdrawal, contact Paul Cassidy, Office of Solid Waste (mail code 5306W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; (703) 308-7281, cassidy.paul@epa.gov.

SUPPLEMENTARY INFORMATION: More information about this action can be found at <http://www.epa.gov/epaoswer/non-hw/muncpl/landfill/pb-paint.htm>. On October 23, 2001, EPA published in the **Federal Register** at 66 FR 53535 a direct final rule for Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste. This direct final rule was to expressly allow residential lead-based paint waste to be disposed of in construction and demolition landfills in addition to municipal solid waste landfill units. On the same date, EPA published a separate document at 66 FR 53566 to serve as the proposal to Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste if adverse comments were filed. The rule was scheduled to become effective on January 22, 2002 unless EPA received adverse comments by November 23, 2001. We subsequently received an adverse comment on the direct final rule. Consequently, we are withdrawing the direct final rule and it will not become effective on January 22, 2002.

Dated: December 18, 2001.

Christine Todd Whitman,
Administrator.

Accordingly, the amendments and additions to Part 257 and Part 258 are withdrawn as of December 28, 2001.

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