

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL - -]

Regulation of Fuel and Fuel Additives: Waiver of the Reformulated Gasoline Oxygen Content Requirement for California Covered Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Rulemaking

SUMMARY: Today's action proposes to grant, in part, a request from the State of California for a waiver of the federal reformulated gasoline (RFG) program's 2.0 percent oxygen content requirement. We are proposing a year-round average oxygen content requirement of 1.0 weight percent for gasoline sold in California's federal RFG areas. These areas are the Sacramento Metropolitan Air Quality Management District, the South Coast Air Quality Management District, and San Diego County. Based on a lack of adequate information regarding the appropriateness of a waiver as the automobile fleet turns over to newer technologies, the waiver would terminate at the end of 2004. Any petition to extend the waiver would be fully and carefully considered by EPA.

DATES: Comments. Submit comments on today's proposal on or before [50 days after date of publication in the FEDERAL REGISTER]. Comments and data may be submitted by electronic mail (e-mail) to: a-and-r-docket@epa.gov. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1, or Corel 8 file format. All comments and data submitted in electronic form must note the docket number: A-2000-10. No confidential business

information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Barry Garelick (6406J); U.S. Environmental Protection Agency, Office of Transportation and Air Quality, 501 - 3rd Street, NW; Washington, DC 20001. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. A public hearing will be held on [20 days after date of publication in the FEDERAL REGISTER]. Persons wishing to testify at a public hearing must contact Barry Garelick at (202) 564-9028, and submit copies of their testimony to the docket and to Barry Garelick at the addresses below, no later than 10 days prior to the hearing. After the hearing, the docket for this rulemaking will remain open for an additional 30 days to receive comments.

ADDRESSES: Docket. Docket No. A-2000-10 contains the information relevant to this proposal. The Docket is located at the U.S. Environmental Protection Agency, Air Docket Section, Room M-1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

Comments. Any person wishing to submit comments (and/or testimony if a hearing is held) should send them (in duplicate, if possible) to docket number A-2000-10, by U.S. Postal Service to: Air and Radiation Docket and Information Center (6102), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; or in person or by courier to: U.S. Environmental Protection Agency, Air Docket Section, Room M-1500, 401 M Street, SW, Washington, D.C. 20460. A separate copy of all comments (and/or testimony) should also be sent to Barry Garlick (6406J), Environmental Protection Specialist, U.S. Environmental Protection Agency, Office of Transportation and Air Quality, Transportation and Regional Programs, 501 - 3rd Street, NW, Washington, D.C. 20001, telephone number (202) 564-9028, electronic mail address: garlick.barry@epa.gov.

Public Hearing. A public hearing will be held at U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105 beginning at 10:00 AM. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Barry Garlick, Transportation and Regional Programs Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 501 - 3rd St, NW, Washington, DC 20001, telephone number (202) 564-9028, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Barry Garlick to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

FOR FURTHER INFORMATION : For further information about this proposed rule, to request a public hearing or inquire about whether a public hearing will be held, or to verify the

time, date and location of a public hearing, contact Barry Garelick, Environmental Protection Specialist, Office of Transportation and Air Quality, Transportation and Regional Programs Division, at (202) 564-9028. To request a public hearing, contact Barry Garelick, (202) 564-9028 no later than [10 days after FR publication date].

SUPPLEMENTARY INFORMATION:

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's proposed rule is also available on the WWW. Following signature, a copy of the rule will be placed on the Office of Transportation and Air Quality's web site for newly proposed or promulgated rules at <http://www.epa.gov/otaq/rfg.htm>.

Regulated Entities. Regulated categories and entities potentially affected by this action include:

Category	SIC	NAICS	Examples of regulated entities
Refining	2911	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.

The remainder of this proposed rule is organized as follows:

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I. SUMMARY OF DECISION AND BACKGROUND

A. General findings and conclusions

1. Summary of the basis for today's proposed action

Section 211(k)(2)(B) of the Act, 42 U.S.C. § 7545(k)(2)(B), allows EPA to waive compliance with the oxygen content requirements under certain circumstances. Section 211(k)(2)(B) reads:

The oxygen content of the gasoline shall equal or exceed 2.0 percent by weight (subject to a testing tolerance established by the Administrator) except as otherwise required by this Act. The Administrator may waive, in whole or in part, the application of this subparagraph for any ozone nonattainment area upon a determination by the Administrator that compliance with such requirement would

prevent or interfere with attainment by the area of a national primary ambient air quality standard.

EPA has authority under this section to waive the oxygen content requirement, to the extent reasonably necessary, where the EPA determines, that compliance with the oxygen content requirement would interfere with attainment of the primary National Ambient Air Quality Standard (NAAQS) in an ozone nonattainment area. In evaluating California's request for waiver of the oxygen requirement, EPA has analyzed the need for additional NO_x reductions in California, the impact of oxygen content on emissions, and the likely composition of gasoline in the relevant nonattainment area(s) with and without a waiver of the oxygen content requirement. This analysis has allowed EPA to assess how flexibility resulting from a waiver will assist California in attaining the ozone and particulate matter NAAQS.

2. Summary of today's proposed action

We are proposing today to grant a partial waiver of the reformulated gasoline (RFG) oxygen content requirement for California gasoline subject to the federal RFG requirement. EPA is proposing to waive, in part, the oxygen content requirement for the federal RFG covered areas in California, under section 211(k)(2)(B) of the CAA. This partial waiver would reduce the required year-round oxygen level in federal RFG for California gasoline to 1.0 percent by weight, through the end of 2004. Our evaluation has revealed the following key points:

There is a shortfall of NO_x reductions in the South Coast Air Quality Management District (SCAQMD) and Sacramento Metropolitan Air Quality

Management District (SMAQMD), and, thus, additional NOx reductions are needed in these regions;

- California gasoline currently subject to California and federal RFG requirements including the federal oxygen content requirement is required to, and does, achieve significant NOx reductions in these areas and would continue to do so regardless of the type of oxygenate;
- Achieving greater NOx reductions is also possible, and affording refiners additional flexibility in the fuel formulation process by a partial waiver will enable California to achieve even greater reductions in NOx emissions;
- These additional NOx reductions resulting from the granting of a partial waiver will work to alleviate the NOx shortfall and therefore provide important additional emissions reductions needed to help California attain and maintain the ozone and particulate matter NAAQS, and
- A partial waiver will have an effect on emissions other than NOx, and these overall effects support the conclusion that a partial waiver would aid California in attaining the ozone and particulate matter NAAQS.
- EPA is proposing to condition this waiver on a demonstration by the California Air Resources Board (CARB) that it will take enforceable action to make sure that these additional NOx reductions are in fact realized. EPA is proposing that CARB submit a demonstration to EPA, within six months of issuance of a final rule granting a waiver, of the actions it plans to take to ensure that the additional

NOx reductions expected to result from the issuance of the waiver are in fact achieved.

- As the fleet turns over to vehicles with newer technologies, such as improved operation and catalysts, the ability to achieve additional NOx reductions from this formulation flexibility may disappear or become less significant. At this time, EPA does not have adequate information to fully evaluate whether a waiver would continue to be appropriate as the fleet turns over to vehicles with newer technologies. Therefore, this waiver would only apply through the end of 2004. Prior to that date, CARB may seek an extension of the waiver by demonstrating that compliance with the oxygen content requirement after that date would continue to prevent or interfere with attainment of the NAAQS.

We note that although the partial waiver would result in greater NOx reduction in California, ethanol has played and will continue to play a major role in the production of RFG since the program began in 1995. Ethanol helps in the production of octane quality, often allowing for decreased use of aromatic compounds, for example, that tend to increase unhealthy vehicle emissions. Ethanol also dilutes the other components of gasoline, such as sulfur, olefins, and benzene, that can contribute to vehicle emissions. As we discuss in Section I.C. below, the uniqueness of California fuel and the refinery configurations and capacity in California provides an opportunity for California to achieve greater NOx benefits with a limited use of oxygen. We believe that it is extremely unlikely that other states could obtain greater NOx benefits with less oxygen.

Finally, as discussed in detail in Appendix B of the Technical Support Document for this proposed Rulemaking (see Docket A-2000-10, Document Number II-B-2), the modeling underlying EPA's evaluation of California's petition relies in part on the reasonable expectation that California's ban on the use of MTBE in gasoline will take effect according to the schedule currently embodied in California law. Because EPA can identify no convincing evidence that California's ban will not take effect, and because the basis for California's ban is generally consistent with EPA's findings regarding the risks associated with MTBE contamination, we believe that this is appropriate. EPA is currently working on a proposed rulemaking under Section 6 of the Toxic Substances Control Act (TSCA) to eliminate or significantly reduce MTBE in gasoline.

3. Description of partial waiver proposal

We are proposing today to grant the State of California a partial waiver of the oxygen content requirement. We are proposing to grant a waiver by allowing a year-round average oxygen level of 1.0 weight percent, through the end of 2004. A partial waiver approach is appropriate because we expect that a significant amount of California summertime gasoline will continue to be oxygenated even if a waiver is granted. This is based on the refinery modeling performed to evaluate how gasoline would be reformulated if oxygen content is not required. Among the various scenarios we considered in the refinery modeling, the extended year-round oxygen averages range from 0.9 percent to 2.0 percent by weight oxygen with most scenarios yielding oxygen levels around 1.0 percent. This reflects a variety of factors, indicating that most of the federal RFG in California will continue to be oxygenated under the California wintertime

oxygenated fuel program, a wintertime program designed to reduce wintertime carbon monoxide emissions. The level of the proposed waiver is intended to maximize the potential for additional NOx reductions that the State of California can gain by providing this flexibility to refiners.

The analysis supporting this proposal shows that refiners are currently achieving NOx reductions for gasoline subject to both CARB and EPA RFG requirements but that if refiners are given additional flexibility to reformulate gasoline subject to CARB's RFG requirements, by reducing the requirement to add oxygen to the gasoline, then refiners can be expected to produce gasoline that achieves more reductions in NOx than is otherwise required under CARB's regulations. In effect, this additional flexibility is expected to lead to voluntary over compliance with CARB's current NOx reduction requirements. This is based in large part on refinery modeling that is unique to California, taking into account the choices refiners can reasonably be expected to make to most economically produce gasoline subject to CARB's current RFG requirements. This analysis is not itself a guarantee, however, that these additional NOx reductions will in fact be achieved if a waiver is granted.

Since the achievement of the additional NOx reductions is the underlying premise for the waiver, EPA is proposing to grant this waiver under condition that California must demonstrate that it will take enforceable action to make sure that these additional NOx reductions are in fact achieved. EPA is proposing that CARB submit a demonstration to EPA, within six months of issuance of a final rule granting a waiver, of a schedule for specifying actions it plans to take to ensure that the additional NOx reductions expected to result from the issuance of the waiver are in fact achieved.

Finally, as the fleet turns over to vehicles with newer technologies, such as improved operation and catalysts, the ability to achieve additional NOx reductions from this formulation flexibility may disappear or become less significant. At this time, EPA does not have adequate information to fully evaluate whether a waiver would continue to be appropriate as the fleet turns over to vehicles with newer technologies. Therefore, this waiver only applies through the end of 2004. Prior to that date, CARB may seek an extension of the waiver by demonstrating that compliance with the oxygen content requirement after that date would continue to prevent or interfere with attainment of the NAAQS. EPA will fully and carefully evaluate any such request for an extension, and will make a decision regarding such an extension based on all of the evidence available at that time.

B. California's request for a waiver from the oxygen requirement

In a letter dated April 12, 1999 from California Governor Gray Davis to Administrator Browner, California officially requested a waiver from the federal oxygen requirement for reformulated gasoline, under Section 211(k)(2)(B). Under the Clean Air Act, EPA may waive the oxygen mandate, in whole or in part, "...upon a determination by the Administrator that compliance with such requirement would prevent or interfere with the attainment by the area of a national primary ambient air quality standard [NAAQS]." (Filed in docket A-2000-10, document number II.D.-1; also available at <http://www.arb.ca.gov/chg/Oxy/wav/041299.pdf>) The April 12, 1999 submittal stated that "the ARB will be revising its CaRFG program this year, and continuing the oxygen mandate will make it more difficult to maintain the emission reductions benefits needed for California's SIP." The submittal did not, however, contain the technical

analysis to support the statement that the oxygen requirement might actually prevent or interfere with the attainment of the NAAQS in California. As such, the Agency believed that the request submitted by California on April 12, 1999 did not provide enough detail about the underlying analyses upon which the request was premised to allow EPA to make a careful and fully informed decision on the request.

Subsequent submittals from CARB provided additional information necessary to evaluate California's request for a waiver from the oxygen requirement. Upon receipt of information that CARB submitted on February 7, 2000, EPA believed it had sufficient information upon which to fully evaluate California's waiver request. In order to make the determination of prevention or interference with a NAAQS as required by Section 211(k)(2)(B) of the Clean Air Act, the Agency then began an independent evaluation of the data, modeling, and other information submitted by California in support of its request for a waiver from the federal RFG oxygen requirement.

C. Uniqueness of waiver to California

Our conclusions regarding what kind of mixed pool of oxygenated RFG and non-oxygenated RFG would be produced if refiners had the additional flexibility provided by a waiver, and how such a mixed pool of oxygenated RFG and non-oxygenated RFG would affect California emission inventories, rely on several very specific considerations associated with the unique feature of California's gasoline market. (A detailed discussion of the mixed pool is provided in Section IV.B. of the Technical Support Document in Docket A-2000-10, Document Number II-B-2). These unique features in the California gasoline market include 1) difference

between California's gasoline standards and federal gasoline standards; 2) difference between California compliance options versus federal compliance options; and 3) the very specific way in which California refineries are configured to make motor fuels for California compared to refiners that produce RFG for the rest of the country. These differences are discussed below.

California has its own set of state reformulated gasoline (CaRFG) emissions standards which have been adopted by the state and which are different than the federal standards. EPA has, however, recognized that California's standards are expected to achieve at least as good reductions in emissions than the federal RFG standards. California's standards for NOx and toxics are more stringent than the corresponding federal standards and at least as stringent for VOC emissions. In exempting California gasoline from several aspects of EPA's RFG enforcement provisions, we have previously recognized that the California standards result in the production of gasoline that meets or exceeds most of the emissions and content requirements of federal RFG.¹

In addition to having different standards, California has built its own Predictive Model which is used by regulated parties to comply with California's own unique standards. (A more detailed discussion of California's model can be found in Section IV.B. of the Technical Support Document.) The California predictive model allows for the use of several different compliance options including a flat limit approach, an averaging approach, and any alternative recipe that can be shown to produce essentially equivalent or better emissions performance compared to a certain set of California's fuel specifications. As we discuss in Section II.B. of this document

¹ 64 FR 49992, September 15, 1999: Extension of California Enforcement Exemptions for Reformulated Gasoline Beyond December 31, 1999. This FR notice contains an explanation of why California's standards are more stringent.

(and in greater detail in Section IV.B. of the Technical Support Document), California has built a new model for Phase 3 gasoline compliance. The Phase 3 model is substantially different from the Phase 2 model and consists of eighteen exhaust sub-models representing six pollutants and three technology classes. The model also allows for an evaporative emissions compliance option which allows refiners to determine hydrocarbon emissions equivalency based on a combination of exhaust and evaporative emissions. The model also introduces a CO credit which recognizes the ozone-forming potential of CO.

Finally, unlike gasoline sold in most other RFG areas, California RFG is almost entirely produced by refiners within the state. The California refining industry is not configured the same way as the rest of the country's refining industry. Thus, given the task of meeting California Phase 3 standards with and without oxygen, the California refining industry will reformulate the fuels made in California in a very California-specific fashion. Thus, it would not be possible to conclude that the reformulation decisions made by California refiners to meet CARB's unique requirements and the emissions effects of these reformulation decisions are applicable to any other RFG area outside of California.

For these reasons, California presents a unique situation with standards different than other RFG areas, compliance approaches not applicable to other RFG areas, and refineries that formulate fuel differently than the rest of the country. Therefore the additional reductions in NOx emissions or other inventory changes expected in California from increased flexibility in oxygenate use are based on factors unique to California. It would not be correct to project that they would also occur in any other RFG areas outside of California.

II. EPA'S EVALUATION OF CALIFORNIA'S PETITION

We conclude that compliance with the 2.0 weight percent oxygen content requirement for RFG would interfere with attainment of the NAAQS for ozone and PM in the RFG areas in the State. EPA has considered the data and other analyses submitted by CARB in support of its request for a waiver. We have also considered information submitted by other interested parties (see Appendix C of the Technical Support Document for this rulemaking in Docket A-2000-10, Document Number II-B-2). We conducted further analyses based on CARB's submittals, the results of which have led to our decision to grant the waiver, and are described below. (A detailed discussion of the technical analysis is provided in the above referenced Technical Support Document).

A. Need for additional NO_x emission reductions

The basis for California's waiver request rests on CARB's assertion that additional NO_x reductions are needed in California. CARB claims that the South Coast Air Quality Management District (SCAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) need additional NO_x reductions beyond the commitments made in their recently approved State Implementation Plans (SIPs) for these areas to attain the National Ambient Air Quality Standards (NAAQS) for ozone and particulate matter. In fact, there is a shortfall of NO_x reductions needed by 4 tons/day in the SCAQMD and 4 tons/day in the

Sacramento RFG area, which both districts have committed to EPA to make up through additional control measures.²

In addition, we believe that even though San Diego County does not show emission reduction shortfalls of NO_x, the waiver should be granted for this area as well because 1) additional NO_x reductions would help to ensure that the San Diego County area would continue to meet the NAAQS, 2) waiver of the oxygen requirement in San Diego County would provide additional NO_x reductions in SCAQMD from gasoline purchased by commuters within San Diego County and consumed within SCAQMD, and 3) excluding San Diego County from a waiver could potentially cause severe disruptions in the production and distribution of gasoline in California.

Finally, we are proposing that the waiver would also be applicable in the San Joaquin Valley once it becomes an RFG area (it was re-designated as a "serious" non-attainment area for ozone). We believe that the waiver should extend to the San Joaquin Valley RFG area since we would expect similar NO_x reductions there and because of the potential need for NO_x reductions in that area to attain the ozone and particulate matter NAAQS, as well as the potential for disruption to the distribution system in California if the area is excluded from the waiver. We solicit comment on our proposal to extend the waiver to the San Joaquin Valley when it becomes a federal RFG area.

² As discussed in the Technical Support Document (see Docket A 2000-10, Document Number II-B-2) the NO_x shortfall is calculated based on the "carrying capacity" for each region (i.e., the maximum amount of NO_x emissions that can be sustained that will allow attainment of the ozone and PM NAAQS) which is derived through Urban Airshed Modeling (UAM) simulations. The NO_x shortfall for a specific region is the difference between the amount of NO_x projected to be emitted after implementation of the various control measures in a SIP, and the carrying capacity for that region.

B. Effect of waiver on total emission changes

EPA's evaluation of the effect of a waiver on changes in NO_x, VOC, and CO inventories are based upon refinery modeling predictions of the most economic levels of oxygen use for both a waiver and non-waiver scenario. We considered various possible scenarios that were derived from modeling, as discussed in detail in Section IV.C. 2. of the Technical Support Document. We estimate that the effect on NO_x, VOC and CO inventories (taking into account nonroad effects) in the South Coast Air Quality Management District for the various scenarios range from 5 to 10 tons/day additional reduction in NO_x, 4 to 16 tons/day additional reduction in VOC, and 130 to 300 tons/day increase in CO. It is important to note that the additional decreases in NO_x and VOC that would occur are in addition to those under the California RFG Phase 3 regulations if a waiver were not granted.

Using oxygen usage patterns resulting from our refinery analysis, we would expect that the additional NO_x emissions benefits would occur as refiners use the additional flexibility provided by a waiver of the oxygen content requirement. Our analysis indicates that year-round average oxygen levels of approximately 1.0 weight percent, as defined by the market shares estimated for the scenarios studied, would lead to the greatest potential NO_x reductions. Additionally, EPA feels generally confident that based on the photochemical relationship between CO and species of VOC that are emitted from automobiles, that the CO increases

associated with a waiver are offset by the decreases in VOC, based on the prevalence and magnitude of VOC reductions in the fuel scenarios that we examined.³

III. CONCLUSIONS AND DECISIONS

A. Importance of additional NOx emissions reductions with respect to EPA's decision

Both the SCAQMD and SMAQMD need additional NOx reductions in order to achieve both the ozone and particulate matter National Ambient Air Quality Standards (NAAQS). Both areas currently have an emission reduction shortfall of 4 tons/day of NOx.

Additional reductions in NOx will bring these regions closer to meeting the respective NOx targets, and reductions in VOC, as discussed in Section II.B will serve to offset the ozone impact of any CO increase associated with the waiver. Granting the waiver, however, will not by itself ensure that RFG in California achieves more NOx reductions than it otherwise would under California and federal regulations. California will be required to demonstrate how it will ensure that the additional NOx reductions made possible by the waiver will in fact be achieved.

B. Rationale for granting a partial waiver

We are proposing to grant a partial waiver because all refining scenarios we have modeled to evaluate how gasoline would be reformulated in a waiver situation predict that a significant amount of California gasoline will continue to be oxygenated even if a waiver is

³ See EPA's proposal to adjust the VOC performance standard for RFG that contains 10 volume percent ethanol. (65 FR 42940; July 12, 2000). The Technical Support Document for the referenced July 12, 2000 rulemaking provides further discussion of the relationship and is available in Docket A-99-32, Document Number II-B-2.

granted. Additionally, most of the federal RFG in California will continue to be oxygenated under the California wintertime oxygenated fuel program which is designed to reduce wintertime carbon monoxide emissions.⁴ Among the various scenarios we considered, the expected year-round oxygen averages range from 0.9 percent to 2.0 percent by weight oxygen with most scenarios yielding average oxygen levels around 1.0 percent. These ranges are based upon refinery modeling predictions of the most economic levels of oxygen use for a waiver scenario considering various possible scenarios (see Section IV.C.2. of the previously cited Technical Support Document for this proposed rulemaking).

Under section 211(k)(2)(B) of the Clean Air Act, Congress directed EPA to include a 2.0 weight percent oxygen requirement as part of RFG program. Congress also allowed EPA to waive this requirement in whole or in part, but only if EPA determines that compliance with the oxygen requirement would interfere with the state's ability to meet a NAAQS. (See Appendix A of the previously cited Technical Support Document for a full discussion of EPA's authority to waive the oxygen requirement). All of our modeling suggests that a significant amount of gasoline will continue to be oxygenated should a waiver of the requirement be granted. That portion of the gasoline pool that continues to be oxygenated under a waiver scenario could not possibly interfere with attainment of a NAAQS since it would be oxygenated with or without a waiver. Furthermore, based on our analyses of refinery modeling, we conclude that no cases with year-round oxygen levels much lower than 1 percent would actually occur with a waiver.

⁴ To help reduce wintertime carbon monoxide emissions, for four months of the year, California requires that gasoline marketed in the Los Angeles area during the wintertime contain 2.0 percent oxygen by weight. This requirement continues even if a waiver from the RFG oxygen requirement is granted.

Therefore, we are proposing to grant a partial waiver that would encompass a year-round oxygen level reflecting the approximate level of oxygen use that maximizes the potential for additional reductions in NOx.

The highest level of potential additional NOx reductions in the refining scenarios we have modeled is associated with a year-round oxygen average around 1.0 percent by weight (See Table 33 in Section IV.E of the Technical Support Document). We believe this to be the most appropriate oxygen level for a partial waiver because it allows the flexibility for the state to achieve the greatest additional NOx reductions possible. The level of the proposed waiver is therefore designed to maximize the additional NOx reductions that can be achieved by RFG in California. The waiver to a year-round average oxygen content of 1.0 percent by weight will essentially require that ethanol be used at a level equivalent to 1.0 percent oxygen by weight on an annual average (about 3 percent by volume on average).

Finally, we note here that the NOx/VOC/CO benefits and disbenefits derived in this analysis are completely dependent upon California-specific state fuel standards and upon the California-specific way California refiners are expected to reformulate their fuels in light of these standards. The refinery modeling does not provide a basis to determine whether similar inventory changes would occur in other states served by other refiners and subject to different gasoline standards.

C. Regulatory approach

We are proposing today to grant the State of California a partial waiver of the oxygen requirement for California gasoline subject to this federal RFG requirement. The waiver would

be granted to require a year-round oxygen level of 1.0 weight percent in federal RFG, rather than the currently required 2.0 weight percent. The waiver would also eliminate the per-gallon oxygen minimum in federal RFG areas in California.

The analysis supporting this proposal shows that if refiners are currently achieving NOx reductions for gasoline subject to both CARB and EPA's RFG requirements, but that if refiners are also given additional flexibility to reformulate this gasoline by reducing the requirement to add oxygen to the gasoline, then refiners can be expected to produce gasoline that achieves more reductions in NOx than is would otherwise be achieved under CARB's regulations. In effect, this additional flexibility is expected to lead to voluntary over compliance with CARB's current NOx reduction requirements. This is based in large part on refinery modeling that is unique to California, taking into account the choices refiners can reasonably be expected to make to most economically produce gasoline subject to CARB's current RFG requirements. However, this analysis is not itself a guarantee that these additional NOx reductions will in fact be achieved if a waiver is granted.

Since the achievement of the additional NOx reductions is the underlying premise for the waiver, EPA is proposing to condition this waiver on a demonstration by CARB that it will take satisfactory action to make sure that these additional NOx reductions are in fact realized. EPA is proposing that CARB submit a demonstration to EPA, within six months of issuance of a final rule granting a waiver, of the actions it plans to take to ensure that the additional NOx reductions expected to result from the issuance of the waiver are in fact achieved. While the amount of such NOx reductions may be somewhat difficult to quantify ahead of time, EPA expects that the demonstration will address achieving, at a minimum, 4 tons/day of NOx during the summer

season for the SCAQMD and SMAQMD. The demonstration must include identification of the specific actions CARB intends to take to achieve the expected NOx reductions and a schedule for implementing such actions. We anticipate that these actions will include enforceable requirements sufficient to achieve the expected results. If CARB's demonstration does not adequately ensure that the additional NOx reductions reasonably expected from a waiver will be achieved, or if the specified actions are not fully implemented as submitted, then EPA reserves all rights to withdraw the waiver.

Finally, as the fleet turns over to vehicles with newer technologies, such as improved operation and catalysts, the ability to achieve additional NOx reductions from this formulation flexibility may disappear or become less significant. At this time, EPA does not have adequate information to fully evaluate whether a waiver would continue to be appropriate as the fleet turns over to vehicles with newer technologies. Therefore, this waiver only applies through the end of 2004. Prior to that date, CARB may seek an extension of the waiver by demonstrating that compliance with the oxygen content requirement after that date would continue to prevent or interfere with attainment of the NAAQS. EPA will fully and carefully evaluate any such request for an extension, and will make a decision regarding such an extension based on all of the evidence available at that time.

We are proposing an effective date of January 1, 2002 for the waiver. Under California Executive Order D-5-99, MTBE is to be phased out of California gasoline as soon as possible but no later than December 31, 2002. Since each of EPA's refinery modeling scenarios assume that MTBE may not be used in California gasoline, our confidence in the modeled NOx benefits from a waiver depend in part on California's MTBE ban. Nonetheless, we expect that refiners will

begin to produce gasoline without MTBE well in advance of the effective date of the California MTBE ban, as they transition into the use of ethanol as an oxygenate. We believe that it is appropriate for refineries to have the additional flexibility that today's proposed waiver will afford during at least part of this transition period. We expect that such flexibility during this transition will result in some degree of NOx benefits in California's RJG areas.

IV. ADMINISTRATIVE REQUIREMENTS

A. 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 proposed rule 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 proposed change to RFG requirements in California would provide regulatory relief for refiners who would now be allowed to make RFG with no oxygen. The change being proposed allows but does not mandate this flexibility so that refiners may choose to continue making RFG with 2.0 (or greater) weight percent oxygen. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

B. Executive Order 13084: 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 proposed rule, however, during the period when EO13084 was in effect; thus, EPA addressed tribal considerations under EO13084. EPA will analyze and fully comply with the requirements of EO 13175 before promulgating the final rule.

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 proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate for any tribal governments. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action proposes some changes that would generally relax the Federal 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 proposed rule.

C. **Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.**

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

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) a small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify 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 proposed rule would provide regulatory relief by making the VOC standard for RFG that contains 10 volume percent ethanol slightly less stringent, and by eliminating the oxygen minimum requirement in RFG. These actions 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 proposed rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The action will result in revision of the survey form that refiners must complete, but such revision does not represent significant new reporting requirements, nor a substantial increase in the amount of time spent filling out the form. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060-0277 (EPA ICR No. 1951.08).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to

comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

E. Unfunded Mandates Reform Act

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

including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This proposed rule applies to gasoline refiners, blenders and importers that supply gasoline to RFG areas. Today's action proposes changes that would provide regulated parties with more flexibility with respect to compliance with the RFG requirements.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental health Risks and Safety Risks (62FR19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 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 E.O. 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 E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. We believe that the proposed changes will not have an adverse effect on air quality.

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 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 proposed 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.

II. Statutory Authority

Sections 114, 211, and 301(a) the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)). For a comprehensive discussion of EPA's authority under Section 211(k)(2)(B), see

Appendix A of the Technical Support Document for this rulemaking in Docket A-2000-10,
Document Number II-B-2.

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Reformulated Gasoline

Dated:

Carol M. Browner

Administrator

For the reasons set forth in the preamble, we propose to amend part 80 of title 40, of the Code of Federal Regulations to read 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 80.81 is amended by revising the title of the section and adding a new paragraph (i) to read as follows:

§ 80.81 Enforcement and other exemptions for California gasoline.

* * * * *

(i) (1) Beginning on January 1, 2002, and extending through December 31, 2004, instead of the oxygen content standards in § 80.41(c) and (f), for California gasoline the Phase II Complex Model Per-Gallon Standard for oxygen content (percent, by weight) shall be ≥ 1.0 , and the Phase II Complex Model Averaged Standard for oxygen content (percent, by weight) shall be ≥ 1.0 . There shall be no per-gallon minimum for the Phase II Complex Model Averaged Standard.

(2) On or before [insert date six months from issuance of final rule], California shall submit to EPA a demonstration that California will ensure that the additional NO_x reductions reasonably expected to be achieved by the provisions of paragraph (i)(1) of this section will be achieved. Such demonstration shall include the specific actions that California will take and a schedule for such actions. The demonstration shall include enforceable requirements sufficient to ensure that additional NO_x reductions are achieved in California, including at a minimum: 4 tons per day during the summer season for both the South Coast and the Sacramento Metropolitan Air Quality Management Districts.