PART 920—MARYLAND

1. The authority citation for Part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 920.15 is amended by adding paragraph (cc) to read as follows:

§ 920.15 Approval of regulatory program amendments.

* * * * *

(cc) The following rules and statutes, as submitted to OSM on October 26, 1995, and supplemented with explanatory information on January 31, 1996 and February 16, 1996 are approved effective March 25, 1996:

Rule or statute No.	Topic
Annotated Code of Maryland:	
Section 7–501(m), (w).	Definitions.
Section 7–505(i)(2)	Permitting.
Section 7–511(b)(2) (I), (II), (III).	Revegation.
COMAR 08.20.14.14.	Release of Bonds on Remining Areas.

[FR Doc. 96–7059 Filed 3–22–96; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL18–8; FRL–5445–5]

Approval and Promulgation of Implementation Plans; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule; withdrawal.

SUMMARY: On January 26, 1996 (61 FR 2423), the United States Environmental Protection Agency (USEPA) approved Illinois' October 21, 1993 and March 4, 1994, requests to incorporate rules to control volatile organic compounds in the Chicago Ozone nonattainment area and thereby complete the replacement of the federally promulgated Chicago Ozone Federal Implementation Plan with federally approved State adopted rules as a part of the Illinois State Implementation Plan (SIP). The USEPA is withdrawing this final rule due to the adverse comments received on these actions. In a subsequent final rule USEPA will summarize and respond to the comments received and announce final rulemaking action on this requested Illinois SIP revision.

EFFECTIVE DATE: March 25, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, Air Programs Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6036.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone, Volatile organic compounds.

Dated: March 13, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–7064 Filed 3–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 52

[MI48–01–7251; FRL–5445–3]

State Implementation Plan for Michigan: Withdrawal of Direct Final Action

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: On February 2, 1996, the USEPA published a proposed rule (61 FR 3891) and a direct final rule (61 FR 3815) approving State Implementation Plan (SIP) revision for the State of Michigan which was submitted pursuant to the USEPA general conformity rules set forth at 40 ozone maintenance part 51, subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans. The EPA is withdrawing the final rule due to adverse comments and will summarize and address all public comments received in a subsequent final rule (based upon the proposed rule cited above).

EFFECTIVE DATE: This withdrawal of the direct final rule will be effective March 25, 1996.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. Telephone: (312) 353–6680.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, General conformity, Hydrocarbons, Intergovernmental relations, Oxides of Nitrogen, Ozone, Particulate matter, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 14, 1996.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 96–7065 Filed 3–22–96; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 80

[AMS–FRL–5444–7]

RIN 2060–AG17

Regulation of Fuels and Fuel Additives: Revision to the Oxygen Maximum Standard for Reformulated Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) today revises the regulations for reformulated gasoline in two ways. These changes only apply to reformulated gasoline certified using the Simple Model, which applies until January 1, 1998. First, the maximum allowed level of oxygen in reformulated gasoline is set at 3.2 percent by weight (''wt%''), where a state notifies the Administrator that a limit is needed for various air quality concerns. Second, absent such a state notification, the maximum limit on oxygen content for reformulated gasoline certified using the Simple Model would be that set by the valid range limits of the Simple Model. In addition, the provisions of section 211(f) of the Clean Air Act (''CAA'' or ''the Act'') continue to apply to reformulated as well as other gasolines. These provisions independently set a maximum oxygen content for motor vehicle gasoline.

EFFECTIVE DATE: This rule will be effective on March 18, 1996.

ADDRESSES: Materials relevant to this FRM are contained in Public Docket No. A–95–29. Materials relevant to the reformulated gasoline final rule are contained in Public Dockets A–91–02

and A–92–12. Public Docket A–93–49 contains materials relevant to the renewable oxygenate requirement for reformulated gasoline; some of these materials may also be relevant to today's action. These dockets are located at Room M–1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:00 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4287. To request copies of this document, contact Delores Frank, U.S. EPA, Fuels and Energy Division, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone: (313) 668–4295.

SUPPLEMENTARY INFORMATION:

I. Electronic Copies of Rulemaking Documents Through the Technology Transfer Network Bulletin Board System (TTNBBS)

A copy of this notice is also available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

TTN BBS: 919–541–5742
(1200–14400 bps, no parity, 8 data bits, 1 stop bit)
Voice Help-line: 919–541–5384
Accessible via Internet: TELNET ttnbbs.rtpnc.epa.gov
Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)
<M> OMS—Mobile Sources Information
<K> Rulemaking and Reporting
<3> Fuels
<9> File Area #9 * * * Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: OXCPFRM.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After getting the files you want onto your computer, you can quit the TTNBBS with the <G>oodbye command. 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.

II. Introduction

A. Background

As stated in the proposal (NPRM) to this rule (60 FR 52135, October 5, 1995), 40 CFR 80.41 contains the standards for certification under the reformulated gasoline program. Paragraph (g) of section 80.41 specified that reformulated gasoline designated as VOC-controlled (i.e. for sale during the summertime ozone season) must have no more than 2.7 wt% oxygen per gallon. The regulations further specified that if a state notifies the Administrator that it wishes to have the oxygen standard increased for VOC-controlled reformulated gasoline, a higher cap of 3.5 wt% would be approved by the Administrator, provided that there have been no occasions within the three preceding years when the ozone ambient air quality standard was exceeded within any covered area within the state. The requirements of this paragraph (g) apply to reformulated gasoline certified under the Simple Model, which is applicable until January 1, 1998.

In reexamining this reformulated gasoline provision, EPA determined that the maximum oxygen content for VOC-controlled reformulated gasoline generally was an unnecessary regulatory burden on gasoline and oxygenate producers, and that the requirements for a state to choose a higher oxygen level were also too rigid.

Therefore, EPA proposed to raise the maximum oxygen content of VOC-controlled reformulated gasoline to a higher oxygen level than was allowed by the regulation. Additionally, EPA proposed that upon request of the Governor to the Administrator, the maximum oxygen content of reformulated gasoline sold in that state would be capped at a lower level on the basis of air quality concerns. These two changes would make the maximum oxygen content provisions for VOC-controlled reformulated gasoline similar to those for non-VOC-controlled reformulated gasoline.

Today's action promulgates the provisions contained in the NPRM, with the exception that the references to the maximum oxygen content allowed under section 211(f) of the Act are deleted as unnecessary. This deletion does not change the substantive effect of the regulation. The maximum oxygen content allowed under section 211(f) continues to apply to reformulated gasoline and does not need to be referenced in this regulatory provision. There are a number of benefits to be gained by these changes to the regulation. These benefits include the potential for reduced burden on the states and industry, reduced cost of compliance with the reformulated gasoline requirements, and reduced costs to consumers. Discussion of the changes promulgated today, comments received on the proposal, and EPA's responses to these comments are presented below.

B. Final Rule

The maximum cap on oxygen content is deleted from section 80.41(g), so that the maximum amount of oxygen allowed in reformulated as well as other gasolines would be that allowed under section 211(f) of the Act subject to the limits of the valid range for use of the Simple Model.[1] There is an exception to this general rule. Where a state notifies the Administrator that the use of an oxygenate will interfere with attainment or maintenance of an ambient air quality standard or will contribute to an air quality problem, then the maximum amount of oxygen shall not exceed 3.2 wt% oxygen from ethanol.[2] The state

[1] The maximum amount allowed under section 211(f) of the Act is the amount that is substantially similar to gasoline used in the motor vehicle certification process, or allowed under a waiver granted under section 211(f)(4). In 1991, EPA issued an interpretive rule increasing the maximum amount of oxygen that EPA believes is allowed under the substantially similar criteria of section 211(f)—from 2.0 to 2.7 wt% oxygen. See 56 FR 5352 (February 11, 1991). In addition, the valid range of the Simple Model sets a maximum of 4.0 wt% oxygen. See 40 CFR 80.42(c).

[2] The maximum content is phrased as a limit on the amount of oxygen from ethanol because that is the only oxygenate that currently may be blended

Continued

may request this maximum for either VOC-controlled or non-VOC-controlled reformulated gasoline.

This is in effect the same revision that EPA proposed. It revises the current regulation in the following ways: (1) It treats VOC-controlled and non-VOC-controlled reformulated gasoline the same, under the Simple Model, as far as the maximum oxygen standard, (2) it deletes the oxygen cap in the regulation except where a state notifies EPA of air quality problems, (3) it revises the criteria for imposing an oxygen cap on request from a state, and (4) it changes the oxygen cap to 3.2 wt% oxygen from ethanol where a state requests a cap.

III. Summary of and Response to Comments

A. General

EPA received over 50 comments on this proposal. Over half of the comments were from individual citizens supporting the proposal and thanking EPA and the Administration for their continued efforts to enhance ethanol's usage in the reformulated gasoline program. EPA agrees that the use of ethanol in reformulated gasoline is an important issue of public policy. From the remaining comments, the substantive remarks applicable to this rulemaking are addressed here. Several commenters also remarked on issues not related to this rulemaking, for example, suggestions for other rules and other aspects of the reformulated gasoline program they would like modified. These remarks are not addressed here.

Several commenters that supported the rule indicated that EPA had not addressed many of the benefits of higher oxygenate and/or specifically ethanol use, such as reducing U.S. dependence on imported oil; stabilizing greenhouse gas emissions; benefits if the oxygenate is from a renewable feedstock; benefits to the rural economy; and development of alternative energy sources.

EPA had proposed that today's rule would be effective 60 days after publication in the Federal Register. However, commenters suggested making the rule effective immediately since VOC-controlled reformulated gasoline can be certified/used anytime prior to the beginning of the ozone season and a delay in the effective date would disrupt marketing plans and perpetuate the burden which EPA was attempting to reduce. EPA agrees with the commenter and thus is making today's action effective immediately upon signature of the Administrator.

B. Reformulated Gasoline Regulatory Negotiation

In developing the reformulated gasoline rulemaking, EPA participated in a regulatory negotiation (RegNeg) with interested parties. The result of this process was an agreement in principle (AIP) which contained an outline of the proposed reformulated gasoline rules. As a signatory to the AIP, EPA agreed to draft proposed rules consistent with the AIP outline and to give serious consideration to the outline in developing the final rule.

The AIP states that reformulated gasoline under the Simple Model would be deemed to result in no increase in NO_X emissions if it contained no more than 2.1 wt% oxygen or 2.7 wt% oxygen solely from MTBE. The AIP also states that other oxygenates may be approved at 2.7 wt% if no adverse NO_X impacts can be shown. As discussed in the NPRM, in the February 26, 1993 proposal (58 FR 11722) EPA proposed to allow all oxygenates to be used up to a 2.7 wt% oxygen contribution. At that point, EPA believed that increasing oxygen content to 3.5 wt% might increase NO_X emissions, so it limited use of the higher oxygen content to those states which requested a higher oxygen content and could provide supportive test data. In the December 1993 final rule (59 FR 7716, February 16, 1994), EPA maintained the 2.7 wt% cap, but allowed a state to request a higher cap of 3.5 wt% if it had had no ozone exceedances for the previous three years.

Only a few commenters addressed this issue. One commenter stated that during RegNeg, 2.7 wt% oxygen was deemed to not increase NO_X emissions. The commenter stated that that conclusion was subject to reassessment, and thus it was appropriate to consider modifying that portion of the rule at this time. Two other commenters, however, stated that the proposal was a breach of RegNeg which specifically limited the maximum summertime oxygen content. One commenter indicated they could only support this change if all RegNeg participants approved.

EPA does not believe that today's rulemaking to increase the maximum oxygen content of summertime reformulated gasoline is a breach of the RegNeg agreement. EPA did follow the AIP by drafting proposed rules consistent with the AIP outline and seriously considering the outline when developing the final reformulated gasoline rule. In fact, the 2.7 wt% summertime oxygen cap was part of that rule. In any case, EPA's regulatory actions at this time, several years after the AIP, must be based on a current exercise of discretion, taking into account present facts and circumstances. For example, EPA's Complex Model, one of the models used to certify reformulated gasoline, shows no increase in NO_X emissions with increased fuel oxygen content. Second, EPA believes that other factors (such as increasing base gasoline levels for sulfur and other fuel parameters in anticipation of lower levels in the final gasoline blend due to dilution when oxygenate is added) will not occur and thus will not increase NO_X emissions when higher oxygen contents are allowed. Additionally, today's rule simply modifies the final reformulated gasoline rule which contained provisions (which were not part of the AIP) allowing the higher oxygen content under certain circumstances.

C. Substantially Similar

Today's rule allows all oxygenates to be used in summertime reformulated gasoline (which is certified under the Simple Model) up to the limits in oxygen and/or oxygenate content specified for that oxygenate or combination of oxygenates under the substantially similar requirements of section 211(f) of the Act, or up to the limits which have been granted a waiver under that section, subject to the valid range limits of the Simple Model. Realistically, because of compliance requirements and oxygenate/gasoline economics, EPA expects only a few oxygenates to be used in reformulated gasoline.

A few commenters expressed concern that raising the maximum oxygen cap for all oxygenates to the highest allowable levels could potentially have negative effects on vehicles. One commenter stated that EPA should consider the American Automobile Manufacturer's Association's (AAMA's) recommended oxygenate limits. AAMA's fuel specifications (which also address other fuel components) are based on automotive requirements for optimum performance and maximum durability. In some cases, as with ethanol, the AAMA limits agree with the limits specified or waivered under section 211(f), but for other oxygenates, like isopropyl alcohol, they do not. Additionally, the commenter stated that under AAMA's fuel specification, use of certain oxygenates, e.g., methanol, at waivered or substantially similar levels is undesirable. Finally, one commenter stated that EPA should clarify specific oxygenate/maximum oxygen content values.

Although EPA understands the intent of the AAMA fuel specification, and the

lawfully above approximately 2.7 wt% oxygen, under section 211(f) of the Act.

desire to have the most optimum fuel for automotive use, today's rule will not result in a fuel which is significantly different from fuels already in the marketplace or which could be in the marketplace. This rulemaking simply allows summertime reformulated gasoline to have a slightly higher maximum oxygen content, under the Simple Model, than it did last summer. Currently, all conventional gasoline and wintertime reformulated gasoline, with the exception of California gasoline, could contain oxygenates up to those levels specified or waivered under section 211(f). The ''substantially similar'' or waivered limits of section 211(f) apply to all gasoline in the country, conventional and reformulated gasoline. Additionally, it would not be technically sound, and could result in anti-competitive effects, to allow the ''substantially similar'' definitions to be valid for one fuel but not for another. For these reasons, EPA is retaining the intent of its proposal language on this aspect, namely that for summertime reformulated gasoline the maximum oxygen content shall be the maximum allowed under the provisions of section 211(f). This includes fuels with oxygen/oxygenate contents deemed ''substantially similar'' under 211(f) and fuels which contain oxygen/oxygenates at levels which have been waivered under 211(f).

EPA also proposed to increase the maximum oxygen content of non-VOC-controlled reformulated gasoline from the current 3.5 wt% oxygen (which was meant to be akin to 10 vol% ethanol) to the maximum allowed under the section 211(f) ''substantially similar'' provision and any waivers granted under that section. All comments received on this issue supported this change.

Today's rulemaking does not change the maximum oxygen and/or oxygenate contents allowed for the various oxygenates under the ''substantially similar'' and waiver provisions, and as a result these provisions are not addressed here.

D. Environmental Impacts

Some comments supported the proposal as having no significant environmental impact. One commenter stated that, assuming that this proposal results primarily in increased ethanol use, ethanol production is both energy-efficient and environmentally sound. Several other commenters opposed the proposal based on expected environmental harm, and questioned EPA's environmental assessment. One commenter stated that it opposes the rule until EPA can demonstrate, with more appropriate analyses, that no detrimental environmental impacts result. These commenters were particularly concerned with increases in NO_X and VOC emissions. Their comments are discussed in more detail below. One commenter questioned the use of models to estimate environmental impact, asserting that it is scientifically dishonest to draw conclusions from a scientific model, since model output is a mathematical reflection of model input. This commenter felt that EPA should draw its conclusions solely from measured data. One commenter said that concerns about water and soil implications of increased corn farming for ethanol production do not reflect the increasing use of sustainable agricultural practices which save money and better protect the environment.

EPA has examined the environmental impacts of modifying the oxygen cap requirements under the Simple Model, and those impacts are expected to be minimal. As will be discussed (section E), EPA stands by its use of the Simple and Complex Models to estimate environmental impact, as they are the basis of the reformulated gasoline program.

1. NO_X Emissions Impacts

As stated in the NPRM, EPA has clearly determined that changing the oxygen content of reformulated gasoline is unlikely to have any negative impact on NO_X emissions, regardless of the type of oxygenate under consideration, for purposes of compliance with the no NO_X increase requirements for reformulated gasoline [3]. In addition, an increase in the maximum oxygen content is not expected to increase NO_X emissions from reformulated gasoline compared to a gasoline with a lesser oxygen content when viewed from the perspective of the entire in-use fleet.

Some commenters disagree with EPA's determination that an increase in the maximum oxygen content would not be expected to increase NO_X emissions. These commenters feel that EPA has not provided adequate justification that environmental detriment will not occur, and that EPA does not adequately justify the expected impact on NO_X emissions. One commenter pointed out that the Auto-Oil research studies show increased NO_X with increased oxygenate use, and even that all data sets show the same or increased NO_X emissions. Theoretically, oxygenated fuels are used to reduce CO by enleaning the air/fuel mixture and should therefore increase NO_X emissions. Further, this commenter pointed to EPA's 1989 Guidance, and other Agency studies, which conclude that ethanol blends increase NO_X.

The MOBILE model is EPA's best model available for predicting emissions from the in-use fleet because it accounts for the current in-use technology distribution as well as the mix of normal and high-emitting vehicles, i.e., vehicles of different ages. EPA believes that accounting for both normal-emitters and high-emitters is crucial in the estimation of in-use emissions. The current MOBILE model shows no increase in NO_X emissions with increased fuel oxygen content.

EPA recognizes that much of the currently available data suggests that increases in oxygen content will increase NO_X emissions. However, most of this data was collected on normal-emitting, properly maintained vehicles representing a subset of the technologies available in-use. EPA has concluded that robust conclusions concerning the in-use fleet cannot be drawn from such data. Both the MOBILE model and the Complex Model, which is essentially a major subset of the MOBILE model because it represents 1990 technology, include emission estimates for both normal-emitting and high-emitting vehicles, and thus may provide more accurate estimates of the effects of oxygen on NO_X. For example, the high-emitter portion of the Complex Model indicates that increases in oxygen content decrease NO_X emissions. Such an effect might be due to the cooler burn that oxygenates effect on combustion, or a suppression of preignition by the high octane value of the oxygenate. Regardless, a weighted representation of normal-emitter and high-emitter effects in the Complex Model results in oxygen having essentially no effect on NO_X overall. The MOBILE model, which is designed to represent the in-use distribution of vehicle technologies and emission levels, concurs with the Complex Model in this respect.

Conversely, other commenters agreed that increased oxygenate use would not result in increased NO_X emissions. Assuming that ethanol use would increase, one commenter stated that ethanol displaces other gasoline components which have greater NO_X impacts. Additionally, as noted in the NPRM, increased E200 does increase NO_X, but the overall effect is decreased NO_X. This commenter included data which showed no statistically significant NO_X emissions increase from splash-blending ethanol to get 3.5 wt% oxygen. Another commenter pointed out that preliminary data show that the

[3] Under section 211(k)(2), reformulated gasoline is not allowed to increase NO_X emissions from baseline vehicles when compared to the statutory baseline gasoline.

summer 1995 reformulated gasoline program reduced NO_X emissions somewhat. In general, this commenter believed that NO_X emissions will be lower and sulfur, olefins and aromatics will not increase (supported by the 1995 data), but stated that this cannot be concluded for all batches.

EPA has concluded, on the basis of results generated by the Complex Model, that the use of greater levels of oxygen would not by itself increase NO_X emissions (although the associated higher levels of oxygenates could theoretically increase emissions due to the unpredictable impacts of dilution—as discussed below). As will be discussed, use of the Complex Model in determining the emissions impacts of reformulated gasoline is appropriate and correct. However, EPA recognizes that, in-use, individual states may still have some concerns about the impact of increased oxygen levels on NO_X emissions from the in-use fleet. EPA is retaining an option whereby states could elect to maintain the currently promulgated lower maximum oxygen content.

One commenter pointed out that a no NO_X increase is specified in the Clean Air Act. This commenter believes that oxygen use in gasoline leads to increased NO_X emissions and that this regulation is in violation of the Act by allowing any oxygenation of reformulated gasoline. This commenter feels that allowing 10% ethanol, which results in the highest NO_X increases, would seem to compound the ''marginally legal'' interpretation of the Act.

As stated above, EPA has determined that increased oxygen does not result in increased NO_X emissions when evaluated with the Complex Model. Therefore this action in no way violates section 211(f) of the Act.

2. VOC Emissions Impacts

Several commenters were opposed to the proposal to increase the maximum oxygen content because it would result in increased summertime VOCs, at a time when those emissions present the greatest problem. One commenter pointed out that a result of this proposal could be to displace MTBE with ethanol, increasing the market-share of ethanol-containing reformulated gasoline and increasing VOC emissions in those areas. Another commenter felt that EPA's argument that most of the VOC reductions are due to RVP incorrectly suggests that the reactivity of the VOC emissions has little to do with ozone formation. However, other commenters agreed that, as long as there is no RVP allowance for 10% ethanol blends, increases in evaporative VOC emissions should be minimal. A final commenter felt that the proposal would result in beneficial VOC impacts.

EPA continues to believe that increased maximum oxygen content is unlikely to negatively affect VOC emissions, and could have slightly positive impacts. Although ethanol does slightly increase the RVP of gasoline to which it is added, there is no potential for an increase in RVP in a VOC-controlled reformulated gasoline under the Simple Model because the RVP specifications are not being changed. A fuel producer would have to use other means to reduce RVP when ethanol is added.

Two commenters noted apparent inconsistencies in the assumption of ethanol use and potential increases in evaporative emissions. Specifically, commenters pointed out that in the December 1993 final rule, EPA had stated that a 1 psi RVP allowance for ethanol blends could forfeit all VOC emissions reductions of the reformulated gasoline program. Yet, they say, in this proposal, EPA stated that ethanol ''slightly'' increases the RVP of gasoline to which it is added. They suggest that EPA should correctly characterize the RVP impact.

The statements are not inconsistent. As stated above, while ethanol does increase RVP if RVP is not otherwise controlled, the reformulated gasoline standards limit RVP for all reformulated gasolines.

E. Complex Model

Several commenters thought EPA had inappropriately used the Complex Model to estimate the impact of higher oxygen content on NO_X emissions from reformulated gasoline. They stated that the Complex Model was designed for reformulated gasoline certification and that it was not an air quality or emissions inventory model. Most of these commenters stated that EPA's MOBILE model is the most appropriate tool for forecasting emissions and demonstrating air quality impacts. Other commenters said that the MOBILE model, the Complex Model and the CARB Predictive Model should all be used in any evaluation of NO_X emissions impacts. One commenter said that neither the Complex Model nor the CARB model is directly applicable to EPA's analysis regarding this rulemaking.

The Complex Model is not an air quality or emissions inventory model, and EPA did not propose using the Complex Model for such purposes. Improved air quality is the purpose of the reformulated gasoline program, and significant reductions in ozone-forming VOC emissions and toxics emissions will be realized because of the program. The MOBILE model is a valuable tool for estimating the air quality impacts of fuels for an in-use fleet, as it includes a wide variety of vehicle ages and technologies. The impact of Federal reformulated gasoline (but not California Phase 2 reformulated gasoline at this point) on in-use emissions can be estimated using the MOBILE model. However, for certification purposes, the effects of the reformulated gasoline program must be determined relative to 1990 technology vehicles run on 1990 baseline gasoline. This rulemaking is aimed at establishing the requirements for certification of gasoline as meeting the reformulation requirements established under the CAA, including compliance with the oxygen content and no NO_X increase requirements. For this reason and the reasons discussed in section D, EPA believes that the Complex Model is the most appropriate tool for estimating changes in NO_X emissions due to this rulemaking, for purposes of compliance with the no NO_X increase requirement for reformulated gasoline under section 211(k)(2) of the Act. EPA did evaluate the air quality impacts of this rulemaking, which are addressed in section D. As indicated there, both the Complex Model and the MOBILE model show no increase in NO_X emissions with increased oxygen content.

EPA certifies fuels as meeting the reformulated gasoline requirements on the basis of a comparison to 1990 technology vehicles. Both the Simple and Complex Models are tools through which this certification is carried out. There are no oxygen caps under the Complex Model other than the upper limits for the valid range of the model, set at 4.0 wt% oxygen. For reformulated gasoline, the Complex Model results must show no increase in NO_X emissions over statutory baseline levels. As discussed, the Complex Model shows no increase in NO_X emissions when oxygen content is increased. EPA has made and continues to make a variety of decisions, including setting the Phase II reformulated gasoline standards, based on the Complex Model, again, because that it is the basis for reformulated gasoline certification.

Several commenters indicated that EPA's finding that increased oxygen will not increase NO_X emissions is due to statutory constraints placed on the model and certain key assumptions. EPA agrees that certain statutory requirements and certain assumptions have affected the emission effects estimated by the Complex Model.

Commenters expressed concern about the size of the high-emitter database and the fact that the Complex Model represents only a portion of the in-use fleet, which could make it an inappropriate tool for estimating emissions impacts of the overall fleet. EPA's conclusions regarding oxygen effects on NO_X are based on test data from 1986 and later closed-loop, adaptive-learning vehicles with 3-way or 2-way plus oxidation catalysts (i.e., 1990 technology), and would apply to much of the fleet. EPA acknowledges that the results of the Complex Model do not automatically apply to the entire in-use fleet, but nonetheless believes that it is not inappropriate, especially given the agreement between the Complex Model and the MOBILE model with regard to the impact of oxygen content on NO_X emissions.

Several commenters indicated that, theoretically, due to air/fuel enleanment and combustion theory, NO_X emissions should increase with increased oxygen content. EPA believes however, that NO_X emissions increases due to increased oxygen content would not necessarily occur. The fundamental science behind closed-loop, adaptive-learning designs (i.e., the 1990 technology contained in the Complex Model) argues that enleanment due to oxygenate addition would be offset by reduced air intake. Because of the offset enleanment effects, NO_X emissions will not necessarily increase with increased oxygen content. The test data on which the Complex Model is based supports this.

One commenter stated that numerous studies, including Auto-Oil studies, have shown increased NO_X emissions with increased fuel oxygen content. EPA does not refute these studies—vehicle technologies and ages certainly affect emissions results, and EPA recognizes that in these instances, NO_X increases were observed. However, as discussed earlier in section D, the Complex Model, which is the basis of EPA's analysis for this rulemaking, has both a normal-emitter portion and a high-emitter portion. The effect of oxygen on NO_X emissions for these two emitter groups, when weighted, yields essentially no negative change in NO_X emissions with increased oxygen content.

One commenter stated that the normal emitter part of the Complex Model is consistent with theory but the high emitter part is not, and therefore, overall, the model is incorrect. EPA does not believe that simply because one part of the model ''disagrees'' with theory and another part of the model ''agrees'' with theory that the model is incorrect. Many factors affect the emission results predicted by the Complex Model, and it is inappropriate to discount those results simply because they do not agree with theory. The Complex Model was adopted after rigorously analyzing a broad spectrum of empirical test data. The commenters objections fail to show the invalidity of this test data or the analysis leading to the Complex Model.

Unlike the Complex Model, the CARB Predictive Model, also a fuel certification model, shows that NO_X emissions increase with increased fuel oxygen content. According to most commenters on this issue, the difference in NO_X predictions between the models is due to differences in approach to model development. Commenters mentioned that the CARB model contains more data, represents more of the in-use fleet and differs in its treatment of high emitters. For these reasons, commenters say, the CARB model is more appropriate for estimating emissions impacts in California associated with oxygen changes. EPA agrees that the difference in NO_X predictions between the two models is due to different approaches to model development. Factors such as vehicle technologies, vehicle age, and quality control during testing all affect predicted emissions results. Because of the manner in which normal-emitting and high-emitting vehicles are included in the Complex Model, EPA believes that the Complex Model is the more appropriate tool for estimating NO_X impacts due to fuel changes, for certification of reformulated gasoline. Together with the MOBILE model, the Complex Model is also appropriate for in-use evaluation purposes, from a national perspective.

In contrast with most of the comments on this issue, one commenter stated that EPA's suggestion that the Complex Model was not representative of the in-use fleet is unfounded. The reformulated gasoline program is meant to reduce ozone through VOC (and NO_X) emissions reductions. Based on the Complex Model, these reductions should occur. EPA believes that the Complex Model and the MOBILE model are sound tools for predicting the impact on in-use NO_X emissions from the regulatory change adopted today from the perspective of the fleet nationwide. It may not be the most appropriate tool for predicting local in-use emissions, however, given differences in local fleets versus the fleet on which the Complex Model is based. That is one of the reasons EPA is providing states with an option that would lower the oxygen maximum to 3.2 wt % oxygen from ethanol.

F. Dilution

In the proposal, EPA stated that it expected no NO_X increases due to this rulemaking because (1) the Complex Model shows no increase in NO_X emissions with increased oxygen content, (2) the addition of oxygenate to a base gasoline dilutes other fuel parameters which overall should yield a net reduction in NO_X emissions, and (3) EPA does not expect fuel producers to offset the dilution effects, i.e., to purposely take fuel parameters back toward their original value in the base gasoline. Several commenters agreed with EPA. In fact one commenter stated that the argument that dilution effects should result in net decrease in NO_X can be strengthened by reviewing California data and the outstanding performance of reformulated gasoline during the summer of 1995.

One commenter stated that the proposal relies heavily on ''expected'' fuel changes. Because these changes are not guaranteed, the commenter stated that they should not be counted in estimating NO_X emissions. This commenter also stated that EPA does not allow such latitude (i.e., the use of ''expected'' fuel changes) with state implementation plans (SIPs) and should not take advantage of it in this case. The focus of this rulemaking is determining what regulatory controls, if any, are appropriate to implement the Act's requirement that reformulated gasoline not increase NO_X emissions compared to baseline gasoline. In that context, expected fuel changes are quite relevant. Fuel producers must determine for themselves the most cost-effective means for complying with the reformulated gasoline requirements. When complying under the Simple Model, which is all that is affected by today's rulemaking, refiners must meet the Simple Model RVP and toxics requirements, oxygen and benzene content requirements and ensure that the finished gasoline and reformulated gasoline blendstock for oxygenate blending, or RBOB, (plus oxygenate) they produce will not exceed their baseline values for sulfur, olefins and T90. The values of these latter three fuel parameters then, on average, should be less than or equal to the baseline values, and reductions in these values have been shown to reduce NO_X emissions. It is possible but highly unlikely that E200 could increase (aside from the increase due to dilution), and no data to refute EPA's assumption on this matter has been submitted. Thus EPA is highly confident that the expected fuel changes will occur, on average, and that there will be no net increase in NO_X

emissions. An additional maximum cap on oxygen is not reasonably needed to achieve this result.

It is not possible, nor necessary, for EPA to know exactly what fuel changes each refiner will make, as long as the requirements of the reformulated gasoline program are met. The overall premise of this rule is that the Complex Model shows—even without the effects of other fuel changes—no increase in NO_X emissions with increased oxygen. Any other fuel changes will either increase or decrease NO_X emissions, and EPA is simply saying that it believes, given the other requirements of the program, that the net effect of these other fuel changes will be to further reduce NO_X. EPA's discussion of ''expected'' fuel changes are based on refinery studies as well as discussions with the industry, have been discussed in other works and rules related to the reformulated gasoline program and have not been significantly refuted.

G. Ethanol Market Share

Several comments were received regarding how this change to the reformulated gasoline regulation would impact ethanol use. Several felt that this change would result in increased ethanol use. However, one commenter felt that since EPA is not changing RVP standards for reformulated gasoline, summer 10 vol % ethanol blends would be produced only by using sub-RVP blendstock, which is in short supply.

Assuming that ethanol use would increase, commenters cited many benefits that would be realized by this change. One commenter stated that even a modest increase in the use of ethanol would provide associated energy gains and environmental benefits. Another commenter felt a potential effect of the change may be to shift ethanol use from conventional areas, and most likely would reduce ethanol exports. Other commenters noted that increased ethanol use would benefit rural America by increasing grain production.

One commenter felt that an expanded market opportunity for ethanol would not necessarily harm the domestic MTBE/methanol market. This commenter pointed out that domestic MTBE is not able to meet reformulated gasoline demand. As much as 895 million gallons of MTBE could be imported to satisfy reformulated gasoline demand, and this deficit is 30 times the potential demand this change will create for ethanol. This commenter also pointed out that this change creates a demand for ethanol which is only a fraction of that which would have been created by the renewable oxygenate standard.

EPA recognizes that this change in the maximum oxygen content allowed in reformulated gasoline may result in slightly increased ethanol use. This increase in the ethanol market could well result in the benefits these commenters have mentioned. However, today's action does not guarantee an increase or decrease in marketshare for any oxygenate. EPA today is simply removing a regulatory burden, the current oxygen content cap. Ultimate use of any oxygenate, including ethanol, will depend on the economic situation of each fuel producer.

H. Commingling

One commenter stated that the commingling concern discussed in the proposal was exaggerated. However, many commenters on this issue disagreed with EPA's comment that there may be a slight commingling benefit due to this rule if (under an assumption of constant ethanol volume) there are fewer gallons of reformulated gasoline at the 10 vol% ethanol rather than more gallons at 7.8 vol%. Most believed that summertime VOC emissions in nonattainment areas would increase, due to commingling, as a result of this rule. Commenters said that if ethanol use increases (or MTBE market share decreases) during the summer, there will be more gallons of ethanol-containing reformulated gasoline, and more instances of commingling. One commenter stated that commingling effects are complex and dependent on a number of factors—oxygenate market share, consumer purchase patterns, etc. This commenter stated that EPA's analysis cannot justify a conclusion that commingling impacts are improved or worsened by the proposed rule. Another commenter stated that EPA should evaluate the persistence of the commingling RVP boost. This commenter stated that the persistence will be increased since there will be a higher concentration of ethanol in the tank.

EPA agrees with the commenter's statement that a reduction or increase in commingling impacts cannot be concluded. In the proposal, EPA discussed some scenarios under which the impact of today's rule could increase or decrease the commingling effects. However, as indicated in the Regulatory Impact Analysis (RIA) to the December 1993 final rule, commingling is affected by several factors including ethanol marketshare and ethanol content. This rulemaking may result in changes in ethanol marketshare in reformulated gasoline and/or conventional gasoline areas, or in changes in the ethanol content of reformulated gasoline and/or conventional gasoline, compared to last year. Depending on whether such changes occur, and their magnitude, it is possible that VOC emissions could increase or decrease, due to commingling, as a result of this rule. EPA believes, however, that it would be difficult to quantify or compare the commingling impact of ethanol at 7.8 vol% (as in 1995) to the 10 vol% which is allowed by today's action.

Several commenters indicated that EPA appeared to be contradicting itself not only in the proposal, but in conflict with earlier work not directly related to this rulemaking. For instance, one commenter stated that EPA was inconsistent with its expected change (or no change) in ethanol use—''should contribute to ethanol increase'' and ''* * * total ethanol volume remains the same''. EPA does not agree with commenters in this regard. EPA cannot be assured of any one outcome, e.g., whether ethanol marketshare increases or decreases, whether more ethanol is used in fewer gallons of reformulated gasoline compared to last year, or whether ethanol volumes will shift from conventional to reformulated gasoline areas or from one reformulated gasoline area to another. These factors will be resolved in the marketplace after promulgation of this rule. The language contained in the proposal represented EPA's thoughts about possible outcomes for given scenarios.

One commenter mentioned that in the Renewable Oxygenate proposal, EPA excluded ethanol as a renewable oxygenate when used in VOC-controlled reformulated gasoline because the commingling VOC increase were unacceptable. In that proposal, commingling VOC increases were deemed unacceptable because the increased use of ethanol could approach a 30% marketshare. An ethanol marketshare of that magnitude would certainly have unacceptable increases in VOC emissions due to commingling. However, although the effect of today's action on oxygenate marketshare cannot be definitively determined, it almost certainly will not approach the 30% level (for ethanol) discussed in the Renewable Oxygenate proposal. For this reason, EPA's commingling concerns regarding that proposal are not applicable to today's rulemaking.

A few commenters were concerned that any commingling benefits would occur in attainment areas—where it's not needed. Again, as stated above, EPA can only estimate the commingling impact of today's rule. Marketplace dynamics will determine, among other things, whether more ethanol is produced, whether it is used in

conventional or reformulated gasoline areas, and whether ethanol volumes shift geographically. One commenter expressed concern that by referring to a national basis, EPA has lost sight of the specificity of reformulated gasoline to nonattainment areas. EPA has not lost sight of the area specificity of the reformulated gasoline program but again was attempting to estimate potential impacts of today's rule.

I. Energy Impacts

One commenter stated that EPA was underestimating the potential energy benefits, including benefits for increased displacement of gasoline and imported MTBE (energy security, trade balance). A few commenters questioned the DOE study mentioned in the proposal—one mentioned that the cited study was draft—and provided a copy of the final report which had a more positive energy balance attributable to ethanol production. It showed that ethanol production is 25% more energy efficient than gasoline. Another commenter indicated that recent USDA studies have shown a positive energy balance for the production of ethanol.

EPA agrees that use of ethanol has some positive energy implications, depending on various circumstances, including whether it is used in VOC-controlled or non-VOC-controlled reformulated gasoline. However, because the additional ethanol use allowed by today's rule will be only be roughly 2.2 vol% (per gallon) over 1995 levels, EPA does not expect the energy impacts of the overall reformulated gasoline program to change significantly due to this rulemaking.

J. Economic Impacts

As stated in the NPRM, the largest part of the cost associated with Phase I reformulated gasoline is the oxygen content required by the Act. Lifting the oxygen cap may provide an economic advantage by allowing some refiners to use ethanol during the ozone season when they would not otherwise be able to do so. However, as discussed in the NPRM, refiners must consider a variety of factors when selecting an oxygenate for reformulated gasoline (or any other fuel).

Several commenters supported EPA's economic assessment of the impact of today's action. Some suggested that further economic benefit may occur due to an expanded industrial base and additional jobs from increased domestic oxygenate production. Additional positive economic impacts suggested by commenters include reduced consumer reformulated gasoline cost and increased farm income. One commenter felt the higher oxygen cap would allow refiners to maximize the displacement value of ethanol, reducing the cost of RBOB and ethanol-containing reformulated gasoline. This commenter also stated that since ethanol costs are lower than MTBE costs, additional use of ethanol would increase market penetration of ethanol and provide greater savings for consumers. One commenter explained that the current cap denies refiners the dilution benefits of higher ethanol blends to meet the reformulated gasoline toxics requirements cost-effectively. This commenter indicated that to use ethanol now, refiners must produce a blendstock lower in RVP and aromatics.

One commenter was concerned that EPA's economic assessment ignored the effect of this rule on alkylates. This commenter stated that both alkylates and oxygenates (ethers) use olefins as a feedstock, are high octane blending components, and can contribute to emissions reductions. If olefin feedstocks are limited, by maximizing oxygenates, alkylate feedstocks will also be limited, therefore limiting the emissions benefits of alkylates. A refiner's lowest cost option will likely be to substitute oxygenates for alkylates, leaving olefins and aromatics in gasoline. According to this commenter, the California reformulated gasoline program regulates out olefins and aromatics by increasing alkylates and oxygenates while the Federal reformulated gasoline program has shifted gasoline from alkylates to oxygenates with questionable improvement in emissions. Further, this commenter states that by replacing alkylates with oxygenates, consumers will be paying substantially more per mile driven, since alkylates increase fuel economy. This commenter concludes that EPA neglected these issues in its economic analysis and only superficially addressed economic burden, without regard for actual impact on consumers. This commenter suggests that the Agency review what has actually occurred in the marketplace, and consider the economic burden on consumers.

EPA did not intend to evaluate the impact of oxygenate as a whole, but merely the impact of slightly increased oxygenate use, as this rulemaking seeks only to increase the maximum allowable oxygen content, one limited aspect of the oxygen content requirements in the reformulated gasoline program. EPA believes increasing the maximum allowable oxygen content increases flexibility in oxygenate choice for refiners, which can only be economically beneficial for fuel producers and consumers. As most of this increased oxygenate use is likely to be ethanol, this provision will have little impact on the refinery trade-off between alkylate and oxygenate production.

K. Compliance Burden

As stated in the NPRM, EPA expects today's action will reduce the regulatory burden on gasoline and oxygenate producers, and will simplify the requirements for a state to choose a different maximum oxygen level. Several commenters agreed that this change in the regulation would reduce the burden on fuel producers and on the states. This change would provide increased flexibility in meeting the reformulated gasoline requirements and maximize the efficiency of oxygenate use. One commenter pointed out that it would also reduce the burden for blenders, simplifying logistics and inventory management by eliminating the need to change ethanol blending volumes on a seasonal basis. However, some commenters felt that this change could increase the burden on the states by requiring them to request a lower cap. These commenters felt that estimating a reduced burden on the states assumes that the states want to increase oxygenates. Finally, one commenter felt that when proposing these changes, EPA must address actual or potential regulatory conflicts between technical changes and fuel changes, and not focus solely on attempts to reduce administrative burden.

EPA continues to believe that this regulatory change in the maximum oxygen content of reformulated gasoline will reduce the regulatory burden on gasoline and oxygenate producers and blenders, and on the states. Even if the majority of states prefer to keep the lower oxygen cap, the requirements for doing so are minimal. The Complex Model has revealed that there is no technical reason to limit the oxygen content of gasoline certified as reformulated gasoline, hence the reduction in burden is justified.

L. California

Several commenters felt that California should be exempt from the requirements of this regulation for a variety of environmental and regulatory reasons. First, California has unique air quality problems. One commenter stated that the higher maximum oxygen content allowed under today's action could have a detrimental effect on California's ability to meet the National Ambient Air Quality Standards (NAAQS). Additionally, California retains its authority to regulate fuels.

See section 211(c)(4)(B) of the CAA. Under this authority, California has limited the oxygen content of gasoline sold in the state to 2.7 wt%. Commenters felt that, for these reasons, California should not be required to go through the bureaucratic opt-out hurdle and should be specifically exempted from the rule.

EPA recognizes California's unique environmental problems and regulatory authority. While the Federal standards for reformulated and conventional gasoline do apply in California, if California has imposed its own more stringent regulations, as it has regarding oxygen content, then fuel producers must abide by California's more stringent standards. Thus, because California's oxygen maximum is more stringent than EPA's, that maximum would be the controlling maximum in the state, and the Governor of California would not be required to request a lower oxygen maximum.

M. State Requests for Lower Oxygen Maximum (Cap)

In the NPRM, EPA proposed that the maximum oxygen content of reformulated gasoline sold in a state will be limited to a lower level upon the request of the state on the basis of local air quality concerns. EPA expects that such a request would come from the Governor of the state or their authorized representative. To obtain the lower maximum oxygen content, the state must notify the Administrator that the use of an oxygenate at higher levels would interfere with attainment or maintenance of an ambient air quality standard, or will contribute to an air quality problem. EPA proposed that the lower oxygen cap would become effective 30 days after the Administrator announced the lower standard in the Federal Register.

Some commenters had concerns regarding the procedures and requirements for the lowering of the maximum oxygen content by the Governor. One commenter stated that the EPA must include notice and comment rulemaking procedures for any change to an reformulated gasoline rule, per section 307(d)(1), including states requesting a lower cap. EPA disagrees with this comment. EPA does not agree that a separate rulemaking must be conducted in response to each state's request for a lower oxygen maximum. Through this rulemaking, EPA is establishing a petition-based process that will address, on a case-by-case basis, future individual state requests for a lower oxygen maximum standard under the Simple Model. The regulations establish a clear and objective criteria for EPA to apply in these future non-rulemaking, adjudication actions. These criteria specify that a state's notification to the Administrator must include a notification that the use of an oxygenate will interfere with attainment or maintenance of an ambient air quality standard or will contribute to an air quality problem. This application of regulatory criteria on a case-by-case basis to future individual situations does not require notice and comment rulemaking, either under section 307(d) of the Clean Air Act or the Administrative Procedure Act.

It is not uncommon for the Agency to establish such a petition-based process within its regulations as a way to apply the criteria established in a regulation to a wide variety of individual cases. The reformulated gasoline regulations, for example, include a petition process for approval of individual baseline, augmentations of the Complex Model, exemptions, alternative test procedures, and the like. EPA believes that approach is most appropriate here as well, as it will allow for expeditious and consistent Agency action on the individual request presented by states.

The provision allowing a Governor to request a lower maximum oxygen content is the same as allowed for non-VOC-controlled reformulated gasoline in the December 1993 rule. No notice and comment procedures were specified in that situation, and similarly, none are required under today's rulemaking. This commenter also objected to the proposed 30 days from publication (in the Federal Register) effective date for the lower cap. This commenter felt that refiners would need at least 90 days to sell off stocks of 10 vol% ethanol reformulated gasoline. Another commenter supported the states rights to have a lower cap, but suggested that it become effective in 60 days rather than 30 days. A third commenter felt that as much as 6 months would be needed before a new, lower oxygen maximum took effect. A final commenter suggested that if a request would take effect 30 days after publication, the announcement should be published within 15 days of EPA's receipt of the request. These timing concerns were supported by another commenter who could not support allowing states to impose different oxygen caps, suggesting that this could strain gasoline distribution bulk storage capacity.

EPA agrees with commenters that 30 days may be too short a transition for fuel producers. Therefore the period has been extended to 60 days. A longer extension would not be practical, since this change only applies to the Simple Model during the summer seasons of 1996 and 1997. Based upon information previously supplied to the Agency,[4] EPA believes that 60 days will be sufficient to use the higher-oxygen content reformulated gasoline, thus minimizing storage and distribution problems. While this provision could potentially add another layer of fuel distinction to the reformulated gasoline program, the impact is expected to be small, primarily because the use of specific oxygenates tends to occur in geographic pockets. Use of ethanol (in reformulated gasoline) for instance, is prevalent in certain areas of the country and is very limited in other areas. Those states where it is widely used are not likely to request a lower oxygen maximum, because in those states, ethanol likely provides significant economic benefits. In states which request a lower maximum, it is likely that ethanol use in that state has always been minimal. For clarification purposes, states are not allowed to choose any lower maximum oxygen content. The lower oxygen maximum would be 3.2 wt% oxygen for ethanol for all cases where a lower maximum is requested by a state.

Comments were mixed regarding the requirements which states must fulfill when requesting the lower oxygen maximum. One commenter stated that EPA needed to verify in the final rule that a state would merely have to notify EPA of its intent to have a lower cap. Those commenters opposed to allowing states to request a lower maximum oxygen cap felt that a state should be required to demonstrate ''to the satisfaction of the Administrator'' that unique localized circumstances exist which require the lower oxygen. According to these commenters, states should be required to include specific modeling and test data.

Another commenter felt that states should be allowed to use models more appropriate to their region (than the Complex Model) to make demonstrations for the lower oxygen maximum.

EPA believes that each state should retain the greatest flexibility in addressing local concerns over increased oxygenate use. This will minimize the risk that increased oxygenate use will interfere with local air quality problems. Thus, EPA is retaining its proposed language on this issue. This provisions will maintain

[4] U.S. EPA, ''Final Regulatory Impact Analysis and Summary and Analysis of Comment For: Renewable Oxygenate Requirement for Reformulated Gasoline,'' June 29, 1994.

EPA's intent of increased flexibility and reduced burden for the states, as well as other parties which may benefit by today's action.

Several commenters questioned the need for a lower cap at all. These commenters felt that EPA's technical findings on the air quality effects of higher ethanol reformulated gasoline blends shows no adverse impact and are technically sound. Additionally, these commenters felt that many stakeholders have participated in the research, and the conclusions should therefore be difficult to challenge. While EPA is confident of its technical findings, it recognizes that general modelling will not apply to all regions of the country, and that there may exist unique regions that may be negatively impacted by the increased oxygen content. Therefore the option of requesting the lower standard is appropriate.

Finally, some commenters were concerned that a state's request for a lower maximum oxygen content be to control average oxygen content, and not to discriminate against a particular oxygenate. They did not want the lower cap to be a marketplace barrier to ethanol. States must request a lower maximum oxygen content based on air quality concerns. Regardless of which oxygen maximum a state has, the reformulated gasoline program is neutral with respect to the type of oxygenate used to satisfy the oxygen requirement.

N. Performance

In the proposal, EPA did not address potential engine or vehicle performance problems that might occur as a result of this rulemaking, primarily because none attributable solely to this rulemaking are expected. Although this rule will essentially allow a slightly higher ethanol content in summertime reformulated gasoline than was allowed last summer, the increase will not result in gasoline ethanol contents which are greater than those currently in the marketplace in conventional gasoline and wintertime reformulated gasoline. Additionally, if a refiner was determining compliance based on the Complex Model, he could have produced reformulated gasoline containing 10 vol% ethanol last summer. Thus, since this rulemaking does not allow a significantly different fuel into the marketplace, no performance problems are expected, and thus the issue was not addressed in the proposal. A few comments were, however, received on this issue.

One commenter expressed concern that an increase in allowable ethanol content will increase compatibility problems for consumer vehicles, resulting in higher maintenance costs. This commenter also stated that truck mixing, typically how ethanol blends are produced, can be insufficient—stratification can occur with one layer having a higher (than 10 vol%) alcohol content. Although it is possible that fuels containing greater than 10 vol% ethanol could result in vehicle or engine performance problems, and that truck mixing could result in a non-complying fuel, such concerns are not directly or solely applicable to this rulemaking. As discussed above, the maximum oxygen content of summertime reformulated gasoline allowed by today's rule is limited to the maximum ethanol content allowed under section 211(f), namely 10 vol%. The potential performance and mixing problems cited could occur with any gasoline containing up to the maximum amount of ethanol allowed under section 211(f).

Another commenter expressed concern about the impact of this regulation on small engines, particularly nonroad engines. This commenter stated that EPA had not considered the effects of this rulemaking on small engines. The commenter was concerned that increased oxygenates would lead to deterioration in the condition and performance of small two-cycle engines, and cited several potential performance problems. The performance problems included vapor lock; warm start; increased fuel consumption; deposition problems; separation of mixing oil; swelling of rubber parts; corrosion; extraction of rubber material and deposition at other locations. Although the commenter claimed that some of these problems had occurred recently in tests with 10 vol% ethanol blends, no data was provided to support this claim. The commenter noted that with present levels of allowable oxygenates, some performance problems have been noted and was concerned that increasing the allowed level would cause more serious performance problems. Of particular concern were enleanment-related problems which can occur with oxygenated fuels. As stated by the commenter, small engines without oxygen sensors cannot compensate for changing oxygen levels.

EPA understands the concerns expressed by this commenter regarding oxygenated fuels and small, particularly nonroad, engines. EPA evaluated the impact of oxygenated fuels with regard to potential performance and other related problems in its April 1995 ''Technical Overview of the Effects of Reformulated Gasoline on Automotive and Non-Automotive Engine Performance'' (EPA420–R–95–001) and concluded that ''Reformulated gasolines are expected to have little or no influence on the incidence of many engine performance concerns * * *.'' Regarding enleanment-related problems, EPA did state that, as with any oxygenated fuel, minor adjustments to the fuel intake system may be required to compensate for an enleanment effect. Nonetheless, as stated before, since today's rulemaking does not result in a fuel which is significantly different than other oxygenated fuels currently available, EPA does not expect new or unique performance problems, for either automotive or non-automotive engines, due to the higher oxygen content allowed by today's action.

This same commenter also stated that EPA had not considered the impact of increased oxygenate levels on other EPA rulemakings involving small engine technology and emission levels. The commenter stated that several regulatory programs for small nonroad engines were in the development process, e.g., Phase 2 exhaust emission regulations for small gasoline engines. These programs may require significant changes in technology, and today's rulemaking may undermine the purpose and effect of those regulatory programs and create regulatory conflict between fuel and technology changes.

As stated earlier, EPA did not address potential performance problems in the proposal to today's FRM because none were expected. The fuel changes that might occur as a result of today's rule will not create a significantly different fuel than is already in commerce. In any case, today's regulatory changes only apply under the Simple Model which may not be used to certify reformulated gasoline after December 31, 1997. EPA has reviewed the upcoming nonroad engine regulations. Phase 1 of the nonroad regulatory program was promulgated on July 3, 1995 (60 FR 34582), and the program takes effect in 1997. Engine certification began about January 1996. Because the fuels allowed under today's rule are not significantly different than current fuels, EPA does not believe that engine design changes would have occurred for engines designed to meet the Phase 1 nonroad regulations. Additionally, the final Phase 2 nonroad regulations will not take effect until some model years after 1997. Today's rulemaking is therefore not expected to affect compliance under either Phase 1 or 2 of this nonroad program.

The commenter also expressed concern about the possible increased use of methanol, particularly with regard to material deterioration and phase separation. Methanol use in

reformulated gasoline or any other gasoline is limited to those methanol blends which have received a waiver under section 211(f). Today's rulemaking does not change this requirement in any way.

O. Alternatives

In the notice of proposed rulemaking, EPA requested comment on two alternatives to the proposal. The first alternative was to remove the oxygen cap entirely, allowing up to the maximum oxygen content permitted under section 211(f), (including up to 10 vol% ethanol, roughly 3.5–4.0 wt% oxygen, or 15 vol% MTBE, roughly 2.7—3.2 wt% oxygen), year-round for both VOC- and non-VOC-controlled reformulated gasoline. Under this option, the regulations would not limit the oxygen content of reformulated gasoline even if a state notifies EPA of the environmental reasons for such a limit.

The comments received on this first alternative were mixed. One commenter opposed the alternative because they felt it eliminated flexibility for the states in meeting their air quality needs. In addition, the commenter stated that this alternative plan could create uncertainty in the marketplace for areas with programs which currently limit reformulated gasoline's oxygen content. Two other commenters supported this alternative to remove the oxygen cap entirely, and not allow states to restore the cap simply by notifying the Agency. They felt this approach would provide incentives to use ethanol in non-traditional markets, such as the East Coast. A final commenter stated that the proposal was preferable to either of the alternatives suggested by EPA.

The second alternative presented by EPA in the NPRM would maintain the oxygen cap at 2.7 wt% in the summertime, but allow states to request a higher maximum oxygen content, up to the maximum allowed under section 211(f). Currently states may request a higher cap, but must show that no ozone exceedances had occurred in a covered area during the previous three years. This alternative would remove the ''no ozone exceedances'' requirement.

This alternative was not opposed by commenters, though it was felt that the proposal was the better option. Those supporting this second alternative felt it would be far less disruptive to the reformulated gasoline program than the first alternative would be.

EPA is proceeding with the original proposal, and did not choose to implement either of these alternatives. EPA believes it is important to maintain flexibility for the states in meeting their air quality goals, and thus does not desire to implement the first alternative. Since there was little support for the second alternative, and since it does less to accomplish the goals of the proposal, EPA has also rejected the second alternative.

IV. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's proposals are designed to remove overly burdensome regulations and make it easier for refiners to use ethanol in reformulated gasoline, and thus to ensure market access for ethanol in reformulated gasoline.

V. Administrative Designation

Pursuant to Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the executive order. The Order defines ''significant regulatory action as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this notice of proposed rulemaking is not a ''significant regulatory action''.

VI. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

VII. Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate; or by the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the action proposed today does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities, as well as the states. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

VIII. Statutory Authority

The statutory authority for the actions proposed today is granted to EPA by Sections 211(c), (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7545(c),(k), and 7601.

List of Subjects in 40 CFR Part 80

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

Dated: March 18, 1996.

Carol M. Browner,

Administrator.

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

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

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

2. Section 80.41 is amended by revising paragraph (g) to read as follows:

§ 80.41 Standards and requirements for compliance.

* * * * *

(g) Oxygen maximum standard.

(1) The per-gallon standard for maximum oxygen content, which applies to reformulated gasoline subject to the simple model per-gallon or average standards, is as follows:

(i) Oxygen content shall not exceed 3.2 percent by weight from ethanol within the boundaries of any state if the state notifies the Administrator that the use of an oxygenate will interfere with attainment or maintenance of an ambient air quality standard or will contribute to an air quality problem.

(ii) A state may request the standard specified in paragraph (g)(1)(i) of this section separately for reformulated gasoline designated as VOC-controlled and reformulated gasoline not designated as VOC-controlled.

(2) The standard in paragraph (g)(1)(i) of this section shall apply 60 days after the Administrator publishes a notice in the Federal Register announcing such a standard.

* * * * *

[FR Doc. 96–7162 Filed 3–22–96; 8:45 am]

BILLING CODE 6560–50–P

LEGAL SERVICES CORPORATION

45 CFR Part 1611

Eligibility: Income Level for Individuals Eligible for Assistance

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: The Legal Services Corporation (''Corporation'') is required by law to establish maximum income levels for individuals eligible for legal assistance. This document updates the specified income levels to reflect the annual amendments to the Federal Poverty Guidelines as issued by the Department of Health and Human Services.

EFFECTIVE DATE: March 25, 1996.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, General Counsel, Legal Services Corporation, 750 First Street NE., Washington, DC 20002–4250; 202–336–8800.

SUPPLEMENTARY INFORMATION: Section 1007(a)(2) of the Legal Services Corporation Act (''Act''), 42 U.S.C. 2996f(a)(2), requires the Corporation to establish maximum income levels for individuals eligible for legal assistance, and the Act provides that other specified factors shall be taken into account along with income.

Section 1611.3(b) of the Corporation's regulations establishes a maximum income level equivalent to one hundred and twenty-five percent (125%) of the official Federal Poverty Income Guidelines.

Responsibility for revision of the official Federal Poverty Income Guidelines was shifted in 1982 from the Community Services Administration to the Department of Health and Human Services. The revised figures for 1996 set out below are equivalent to 125% of the current official Poverty Guidelines as set out at 61 FR 8286 (March 4, 1996).

List of Subjects in 45 CFR Part 1611

Legal services.

PART 1611—ELIGIBILITY

1. The authority citation for Part 1611 continues to read as follows:

Authority: Secs. 1006(b)(1), 1007(a)(1) Legal Services Corporation Act of 1974, 42 U.S.C. 2996e(b)(1), 2996f(a)(1), 2996f(a)(2).

2. Appendix A of Part 1611 is revised to read as follows:

Appendix A of Part 1611—Legal Services Corporation 1996 Poverty Guidelines*

Size of family unit	All States but Alaska and Hawaii [1]	Alaska [2]	Hawaii [3]
1	$9,675	$12,075	$11,138
2	12,950	16,175	14,900
3	16,225	20,275	18,663
4	19,500	24,375	22,425
5	22,775	28,475	26,188
6	26,050	32,575	29,950
7	29,325	36,675	33,713
8	32,600	40,775	37,475

[1] For family units with more than eight members, add $3,275 for each additional member in a family.

[2] For family units with more than eight members, add $4,100 for each additional member in a family.

[3] For family units with more than eight members, add $3,763 for each additional member in a family.

Dated: March 29, 1996.

Victor M. Fortuno,

General Counsel.

[FR Doc. 96–7092 Filed 3–22–96; 8:45 am]

BILLING CODE 7050–01–P

*The figures in this table represent 125% of the poverty guidelines by family size as determined by the Department of Health and Human Services.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 960129019–6019–01; I.D. 031996A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Ocean Perch in the Western Aleutian District

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the specification of Pacific ocean perch in this area.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), March 20, 1996, until 12 midnight, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Final 1996 Specifications of Groundfish (61 FR 4311, February 5, 1996) for the BSAI established 5,143 metric tons (mt) as the initial total allowable catch of Pacific ocean perch for the Western Aleutian District.

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch initial total allowable catch in the Western Aleutian District will soon be reached. Therefore, the Regional Director has established a directed fishing allowance of 4,943 mt after determining that 200 mt will be taken as incidental catch in directed fishing for other species in the Western Aleutian District. NMFS is prohibiting directed fishing for Pacific ocean perch in the Western Aleutian District to prevent exceeding the directed fishing allowance.