ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–7491–9]

Extension of Alternative Compliance Periods Under the Anti-Dumping Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's proposal would amend the provisions that EPA promulgated on September 8, 2000, when we published a direct final rule allowing start-up refineries to apply for a conventional gasoline anti-dumping compliance period of longer than one year. Alternative compliance periods are available only to start-up refineries that are facing significant hardship in complying with the anti-dumping statutory baseline oxides of nitrogen (NO_X) standard. Today's proposal would amend the alternative anti-dumping compliance period provisions to permit an alternative compliance period of up to seven years for start-up refineries owned by small refiners (but in no case extending beyond calendar year 2007), while requiring refineries to provide additional environmental benefits for any cumulative NO_X deficits remaining at the end of the fifth or sixth calendar years of any alternative compliance period.

A refinery with an alternative compliance period is allowed to produce gasoline that does not comply with the statutory anti-dumping NO_X standard on an annual average basis, thereby generating a NO_X emissions deficit in the early part of the alternative compliance period. However, the refinery must produce NO_X emissions benefits before the end of the alternative compliance period that make up for these early deficits and that provide an additional environmental NO_X benefit at least equivalent to the overall cumulative NO_X deficit generated during the course of the alternative compliance period. To track its NO_X compliance, the refinery must calculate its NO_X emissions benefit or deficit on a quarterly basis using specified equations. This proposed rule would modify the method for determining a refiner's quarterly NO_X emissions deficit or benefit for a refinery with an approved alternative compliance period, to account for ordinary seasonal variation in gasoline quality and use of different seasonal versions of the Complex Model. The net determination of NO_X deficit or benefit would be unaffected. This proposal would also allow a refinery to meet all or some of the over-compliance requirement by purchasing and retiring NO_X emissions credits instead of requiring the refinery to over-comply based on the actual performance of the gasoline it produces over the course of the alternative compliance period.

Additionally, this proposed rule would allow a start-up refinery to petition to receive the less stringent anti-dumping statutory baseline exhaust toxics value as its conventional gasoline mobile source air toxics (MSAT) standard for all or part of its alternative anti-dumping compliance period. Thereafter, the refinery's conventional gasoline MSAT standard would be the MSAT conventional gasoline default baseline value.

Finally, this proposed rule would make a correction to the quarterly reporting requirements for start-up refineries that have been granted an alternative anti-dumping compliance period. The existing regulation was accidentally promulgated without language requiring that quarterly reports be signed and certified by a responsible corporate officer. Today's proposal would correct that omission.

DATES: Comments or a request for a public hearing must be received by June 5, 2003.

ADDRESSES: To request a public hearing, please contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., (6406J), Washington, DC 20460 or by e-mail to *pastorkovich.anne-marie@epa.gov.* No confidential business information (CBI) should be submitted by e-mail.

EPA has established a public docket for this proposed rule under Docket ID No. OAR–2003–0007, which is available for public viewing at the Air and Radiation Docket and Information Center (EPA/DC) in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listings of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to the proposed rule should be submitted to EPA within 30 days of this notice, and according to the following detailed instructions: Submit your comments to EPA online using EDOCKET (our preferred method) or by mail to EPA Docket Center, Environmental Protection Agency (6102T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

EPA's policy is the public comments, whether submitted electronically or in paper format, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987, or by e-mail to *pastorkovich.anne-marie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the action are parties that produce conventional gasoline. Regulated categories and entities include:

Category	NAICS Code*	SIC Code**	Example
Industry	324120	2911	Petroleum refiners.

*North American Industry Classification System.

** Standard Industry Classification System Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. Background

The Clean Air Act requires EPA to establish rules for reformulated gasoline (RFG) designed to reduce vehicle emissions of ozone-forming volatile organic compounds (VOCs) and toxic air pollutants. The Act requires refiners, importers, and blenders to sell only reformulated gasoline in specific ''covered areas'' with the worst ozone problems. Other areas with ozone levels exceeding the public health standard have voluntarily chosen to become RFG covered areas. Additionally, the Act required us to establish regulations covering all gasoline that is not reformulated. Such gasoline is called conventional gasoline, and the standards governing it are called the anti-dumping standards. We issued final reformulated gasoline and anti-dumping regulations on December 15, 1993[1] and the standards in those regulations became effective in January 1995.

The purpose of the anti-dumping standards is to ensure that the quality of a refiner's conventional gasoline does not get worse once the reformulated gasoline program begins. To ensure that this does not happen, the Act requires that each refiner's conventional gasoline be at least as clean as the gasoline produced by that refiner during the ''baseline'' year 1990. The anti-dumping program specifically governs the exhaust toxics and NO_X emissions of conventional gasoline. These emissions are determined using the Complex Model, a tool which uses the fuel content specifications, or parameters, of a gasoline blend to calculate the emissions associated with that gasoline. The fuel parameters included in the Complex Model are aromatics, olefins, benzene, sulfur, oxygen content and oxygenate type, the percent of fuel evaporated at 200°F and 300°F (E200 and E300, respectively) and Reid vapor pressure (''RVP'').

Under the anti-dumping program, each refinery and importer has an individual baseline consisting of a set of values for the Complex Model fuel parameters and the exhaust toxics and NO_X emissions associated with those values representing the emissions performance of the gasoline that the refiner produced in 1990. An individual baseline can be one of two types. The first type is the unique individual baseline. A refinery or importer has a unique individual baseline if it was in operation for at least 6 months in 1990 and had sufficient data and supporting analysis to determine the actual quality of its 1990 gasoline to EPA's satisfaction. Those with unique individual baselines also have an associated individual baseline volume, which is the volume of gasoline produced or imported by that refiner in 1990. The other type of individual baseline is the statutory baseline. The statutory baseline consists of a set of fixed values for the Complex Model fuel parameters and the emissions associated with those values which represent the average quality of all gasoline produced or sold in the United States in 1990. The summer portion of the statutory baseline was specified in the Clean Air Act; the corresponding winter portion was developed by EPA. Together, the summer and winter portions form the annual average statutory baseline which is specified in 40 CFR 80.91(c)(5). There is no individual baseline volume for those refineries or importers for whom the statutory baseline is the individual baseline.

Compliance with the anti-dumping requirements is generally determined on an annual basis. Each batch of gasoline is evaluated under the appropriate summer or winter portion of the Complex Model; the resulting emissions calculated for each batch are volume-weighted to determine the annual average exhaust toxics and NO_X emissions for the refinery or importer. Then, the annual average emissions are compared to the applicable baseline emissions values to determine whether the refinery or importer is in or out of compliance with its anti-dumping standards.

Section 211(k)(8)(D) of the Act directs us to establish ''an appropriate compliance period or compliance periods'' to be used for assessing compliance with the anti-dumping regulations. As mentioned above, a one year compliance period is the norm. However, on September 8, 2000 we published a rule that allows a refiner to apply for an alternative compliance period under 40 CFR 80.101(k) for a start-up refinery.[2] To receive an alternative anti-dumping compliance period the refiner must show that it is starting up a refinery that will produce conventional gasoline and that it faces significant hardship in meeting the anti-dumping statutory baseline NO_X standard. EPA may approve an alternative compliance period for any domestic or foreign refiner that meets these conditions. If EPA approves the application, we may establish a compliance period of two, three, four, or five years. Under § 80.101(k)(6)(iv), no compliance period may exceed five years or extend beyond January 1, 2006. This date was picked because it represented the deadline for Tier 2 gasoline sulfur standards for most refiners. When EPA approves an alternative compliance period it also establishes milestones that require the refinery to begin meeting the annual statutory baseline by a specified date. Moreover, the refinery must produce gasoline by the end of the alternative compliance period that generates NO_X emissions benefits that are equal to double the cumulative NO_X deficit that the refinery generates during the alternative compliance period. Under the existing regulations, NO_X emission benefits may only be generated by gasoline that is produced by the refiner and that over-complies with the annual NO_X baseline standard. The refinery must also bank stationary source NO_X credits or allowances equivalent to the NO_X deficit it generates on a quarterly basis until it begins to produce gasoline that meets or exceeds the NO_X statutory baseline standard.

III. Today's Proposed Action

A. Maximum Duration of Alternative Compliance Periods for Small Refiners

This proposed rule would allow small start-up refiners to request an alternative compliance period under § 80.101(k) of up to seven years, so long as that period does not extend beyond December 31, 2007. As with all applications for alternative anti-dumping compliance

[1] ''Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule,'' 59 FR 7812 (February 16, 1994). *See* 40 CFR part 80, subparts D, E, and F.

[2] For more information, *see* ''Establishment of Alternative Compliance Periods under the Anti-Dumping Program''—Direct Final Rule, 65 FR 54423 (September 8, 2000).

periods, the Administrator would act upon the petition within six months. EPA believes that this change is appropriate for the reasons outlined below.

The alternative anti-dumping compliance period provisions at 40 CFR 80.101(k) are designed for refiners that are starting up production of conventional gasoline and could achieve the Tier 2 gasoline sulfur reductions earlier than required, but are facing significant hardship in complying with the anti-dumping statutory NO_X standard. Under this provision, such a refiner may request an alternative anti-dumping compliance period of greater than the ordinary one year (currently alternative compliance periods of two, three, four or five years are available). Any refinery subject to an alternative compliance period must meet various substantive and administrative requirements to ensure that there is no environmental detriment as a result of the longer compliance period. Such a refinery must produce a benefit that is equal to twice any NO_X deficit it produces during the alternative compliance period. Sulfur significantly affects NO_X emissions, and decreasing sulfur will result in significant NO_X emissions reductions. Therefore, a refinery granted an alternative anti-dumping compliance period would almost certainly need to install sulfur-reducing technologies (such as those necessary to meet the Tier 2 gasoline standards) before the end of its alternative compliance period in order to generate the NO_X benefits needed to meet its overall NO_X obligations.[3] In fact, one purpose for permitting a refinery to have an alternative anti-dumping compliance period was to promote refinery plans to meet the Tier 2 sulfur levels earlier than otherwise required.[4]

The existing regulations regarding alternative anti-dumping compliance periods make no distinctions based on refinery size. However, small refiners starting up a new refinery may face greater hardships than larger refineries in raising funds for construction of refinery units and installation of equipment to reduce gasoline sulfur. Under existing § 80.101(k), a refiner may request a compliance period of up to five years and no compliance period may extend beyond January 1, 2006. We selected the January 1, 2006 date as the latest date for any alternative compliance period because it is the date by which most refiners must meet the 30 ppm average Tier 2 gasoline sulfur standards under 40 CFR 80.195 and must already have installed sulfur reduction technology. Because a refiner that complies with the 30 ppm sulfur requirement will also most likely comply with the annual average statutory anti-dumping NO_X baseline,[5] an alternative compliance period extending beyond this date would be unhelpful. Moreover, one of the intended benefits of the alternative compliance baseline provisions is to encourage early reductions in gasoline sulfur.

However, if a refiner is a small refiner under the Tier 2 gasoline sulfur regulation, then full compliance with the regulations is not required until January 1, 2008.[6] Thus, an alternative anti-dumping compliance period extending beyond calendar year 2005 may prove beneficial for a small refiner, and also is consistent with EPA intent to encourage early reductions in sulfur content. For example, small refiners may face particular hardship in raising capital and bringing new refinery units on line, including de-sulfurization equipment. In fact, one small refiner with an approved alternative compliance period believes that it will have difficulty complying within the five year maximum period under § 80.101(k), and believes that a longer compliance period would be appropriate. The existing regulations for alternative anti-dumping compliance periods at § 80.101(k) contain no provision for a compliance period that exceeds five years or that extends beyond January 1, 2006. However, we believe that it may be appropriate to allow small refiners to petition for an alternative anti-dumping compliance period of up to seven years, as long as the compliance period does not extend beyond calendar year 2007 (when small refiners generally will have to meet the Tier 2 sulfur requirements). This proposed approach would provide additional flexibility to small start-up refineries. Additionally, it would be extremely difficult for a refinery to generate the NO_X benefits necessary to compensate for the cumulative NO_X deficits generated during its alternative compliance period without implementing sulfur-reducing technologies as soon as possible and producing low sulfur gasoline earlier than otherwise required. Therefore, even with an alternative period extending through 2007, we believe that we would realize the intended benefits of early sulfur reductions.

For any new alternative compliance period petitions, in order for a refinery to receive an alternative compliance period that exceeds five years or that extends beyond calendar year 2005, we propose that the refiner demonstrate that it is a ''small refiner'' for purposes of EPA's Tier 2 low sulfur gasoline regulations[7] and explain the conditions that justify the alternative compliance period requested. For a refinery that already has an alternative anti-dumping compliance period, and that wants to extend its compliance period beyond five years or calendar year 2005, we propose that the refiner submit a petition describing the hardships that make a longer alternative anti-dumping compliance period appropriate and demonstrating that it is a small refiner. Specifically, any refiner requesting an alternative compliance period of more than five years, or extending beyond calendar year 2005, must include all information required under § 80.101(k)(2), appropriately updated to reflect current conditions. Such a refiner would have to include a clear explanation as to the hardship that makes it infeasible for it, as a small refiner, to meet the applicable milestones and standards within five years or by January 1, 2006, whichever comes first. The refiner must show that it is has received approval as a small refiner under the Tier 2 gasoline sulfur regulations and that the conditions of that approval are still applicable. The application must be submitted by no later than January 1, 2004. We chose this date since it permits reasonable time after promulgation of this regulation for a refiner to apply for the flexibility, while ensuring that timely decisions are made to produce sufficient clean gasoline for compliance purposes. The Administrator will act on the application within six months of receipt and will issue an approval or disapproval, in writing, including any conditions or other requirements to which the approval is subject.

Under this proposal, if EPA were to determine that the circumstances described in a petition warrant an extended compliance period, we would be able to grant a refinery an alternative compliance period of up to seven years total, so long as the alternative period would not extend beyond calendar year 2007. If EPA were to grant an alternative

[3] *See* 65 FR 54423, 54426 (September 8, 2000).

[4] *Id.* at 54425.

[5] The NO_X emissions performance of a refinery's gasoline improves dramatically when the refinery reduces the sulfur content of its gasoline, due to the effect of sulfur content on NO_X emissions as calculated by the Complex Model.

[6] *See* 40 CFR 80.260 and 80.553. Under certain circumstances, a refiner may have until 2010 to meet the final gasoline sulfur standards. However, we expect that most small refiners will fully comply with the 30 pm average Tier 2 gasoline sulfur standard by January 1, 2008.

[7] *See* 40 CFR 80.225—80.235

anti-dumping compliance period of more than five years, or extending beyond calendar year 2005, EPA's approval would provide for appropriate milestones and other requirements. If EPA were to approve an extension to an existing alternative compliance period, we would adjust the compliance dates and other requirements as appropriate to reflect the new alternative compliance period.

We propose that, if EPA finds that a refiner has provided false or misleading information in connection with any application relating to an alternative anti-dumping compliance period, we would notify the refiner that its application and any alternative compliance period that relies on such application would be *void ab initio.*

We propose that, if a refiner's status changes at any time during an alternative anti-dumping compliance period and the refiner is no longer eligible for the small refiner hardship provisions of the Tier 2 gasoline rule, then any refineries owned or operated by such refiner would no longer be eligible for an alternative anti-dumping compliance period that extends longer than five years or beyond calendar year 2005.[8] Any change in a refinery's alternative compliance period eligibility would become effective with the first full annual averaging period following the refiners loss of small refiner status. The refinery would be required to notify EPA immediately of any change in small refiner status under the Tier 2 gasoline regulation.[9]

For any refinery with an alternative compliance period that exceeds five years, EPA proposed to require the refinery to provide additional NO_X benefits (above and beyond those benefits required to provide a double payback of cumulative NO_X deficits) if the refinery has any cumulative NO_X deficits remaining at the termination of the fifth or sixth years of its alternative compliance period. As discussed in the September 8, 2000 action, we believe that a one year compliance period should be the norm, even though alternative anti-dumping compliance periods of up to five years may be appropriate in limited circumstances. We continue to believe that the shortest, appropriate compliance period is the correct one and we want to minimize any potential for short-term or long-term environmental detriment. We want to encourage refiners to meet the anti-dumping statutory baseline NO_X standard, on average, for all of their gasoline as soon as possible. Any refinery that is granted an alternative anti-dumping compliance period of up to five years must produce a net NO_X benefit by the end of the applicable period. In the case of a small refinery with an alternative compliance period of more than five years, we believe it is reasonable to require the refinery to provide additional NO_X benefits if the refinery has not made substantial gains by the end of the fifth year of the compliance period, because such requirement will provide a deterrent against delays in the production of cleaner gasoline. Moreover, this requirement functions to minimize the potential for any environmental harm that might occur in the event that a refinery fails to meet its obligations under its alternative anti-dumping compliance period. The longer a refinery's alternative compliance period, the greater the potential for a refinery to generate a large NO_X deficit, and the greater the potential risk to the environment if the refiner cannot meet its obligations. Thus, for an extended alternative compliance period, when a refinery carries NO_X deficits too late into its compliance period, we believe it is appropriate for EPA to impose prophylactic requirements in the form of additional NO_X benefit obligations.

For every ton of NO_X deficit remaining upon the expiration of the fifth year of any alternative anti-dumping compliance period, the small refiner would be required to provide an additional ½-ton of NO_X benefit by the end of the alternative compliance period. These additional NO_X benefits are in addition to all other requirements of § 80.101(k). Similarly, for every ton of NO_X deficit remaining upon the expiration of the sixth year of any alternative compliance period, the refiner would be required to provide an additional 1-ton of NO_X benefit by the end of alternative compliance period. We propose that these additional tons of NO_X benefit may come from actual emissions benefits from gasoline that the refinery produces, or from the purchase and retirement of marketable NO_X allowances or credits as discussed earlier in this notice.

B. Using NO_X Credits or Allowances To Satisfy Double Payback Provisions

Today's proposed rule would allow refiners to purchase and retire marketable stationary source NO_X allowances or credits in order to satisfy the requirements for up to one-half of the total NO_X payback under § 80.101(k)(2). However, a refinery would have to compensate for the entire cumulative NO_X deficit that it generates over the alternative compliance period by producing NO_X benefits from gasoline that the refinery actually produces before the end of the alternative compliance period (measured in tons of NO_X).

Existing § 80.101(k) requires refiners both to compensate for all NO_X deficits generated during the alternative compliance period, and to generate additional NO_X benefits before the end of the alternative compliance period. Accordingly, half of the total NO_X payback represents repayment for ''dirtier'' gasoline produced earlier in the compliance period. The second half of the NO_X payback (beyond the break-even point) represents a precautionary surplus environmental benefit. Currently, all NO_X benefits must come from cleaner gasoline that the refinery actually produces. However, we believe it is appropriate to permit this surplus benefit to be paid in terms of either actual emission reductions from gasoline that the refinery produces, or from the purchase and retirement of marketable NO_X allowances or credits. This would allow additional flexibility for the refiner to invest in and develop infrastructure at the refinery, including infrastructure needed to comply with the Tier 2 gasoline sulfur requirements early. In order to pay back the actual NO_X deficit created in the earlier part of an alternative anti-dumping compliance period, a refinery would have to begin producing adequate quantities of low sulfur/low NO_X gasoline to meet its multi-year average compliance obligations by the end of the applicable alternative compliance period. Discussions with an affected refiner have confirmed this understanding.

To provide for NO_X benefits by way of NO_X credits or allowances, a refiner would have to appropriately retire NO_X credits or allowances on a timely basis. A refiner may acquire stationary source NO_X credits or allowances for purposes of satisfying up to half of its total NO_X repayment obligations under § 80.101(k)(2) from any of several state stationary source programs covered by an approved state implementation plan (SIP), such as the Ozone Transport Commission (OTC) NO_X Budget Program.[10] In order to be applied toward the refiners NO_X payback obligations, the allowances or credits must be current, marketable allowances or credits and must actually be retired by EPA or the administering state agency, and the retired credits or allowances must reflect actual NO_X emissions reductions. It is the refiner's

[8] *See* 40 CFR 80.230.

[9] *See* 40 CFR 80.230(b).

[10] *See http://www.epa.gov/airmarkets/progsregs/noxview.html* for more detailed information about NO_X allowances and credits.

responsibility to ensure that the credits or allowances are legitimate and are actually retired.

C. Correction of Quarterly Compliance Equations and Quarterly Reporting Requirements

Today's proposed rule would change the equations for calculating quarterly NO_X deficits and benefits to reflect ordinary seasonal variation in gasoline quality and differences in the applicable seasonal versions of the Complex Model. The current regulations require a refiner to purchase NO_X credits when, on a quarterly basis, its average NO_X emissions exceed the annual statutory NO_X value. As stated in the September 8, 2000, rule, ''* * * credits function as collateral against any NO_X deficiency that the refiner creates to minimize the possibility of environmental harm in the event the refinery does not fulfill its obligation under the other requirements of the rule.''

EPA believes that the current method of calculating NO_X emissions deficits and benefits at § 80.101(k)(3)(ii) may have the unintended effect of creating an unnecessary pattern of buying and selling because of the combined effects of seasonal gasoline quality and the application of seasonal versions of the Complex Model. EPA believes that we can achieve the same environmental outcome with the changes contained in today's action while avoiding the unnecessary outlay of capital by the refiner at a time when the refiner is operating under an alternative compliance period specifically to reduce the impact of financial constraints.

On a quarterly basis, gasoline production during the first and fourth quarters of the calendar year is almost all, if not entirely, winter gasoline for most refiners. Winter gasoline is not only gasoline with different properties (like higher RVP) than summer gasoline, but it must also be evaluated using the winter Complex Model (which is substantively different from the summer Complex Model used for gasoline produced during the summer months). For a given fuel composition (based on fuel properties used in the Complex Model), the winter Complex Model yields higher emissions than the summer Complex Model. Winter emissions determined using the Complex Model will always be higher than annual emissions determined by combining winter and summer results from the Complex Model.[11] Thus, under the current equation for calculating NO_X deficit and benefit under § 80.101(k)(3), a refiner will almost always have to purchase credits for the first and fourth quarters simply because the equation requires the comparison of the quarterly production against the annual average. A refiner could produce extremely clean winter gasoline in these quarters in order to not have to purchase credits under § 80.101, but it is unlikely that a refiner in start-up mode would be able to produce such clean gasoline.

In the second and third quarters, winter gasoline constitutes roughly 20–30 percent of total gasoline production. Because of the inclusion of summer gasoline, second and third quarter NO_X emissions determined via the Complex Model are generally less than the annual statutory NO_X value. In fact, under § 80.101(k)(3)(ii), this overcompliance in the second and third quarters (resulting in a quarterly NO_X benefit) would likely more than exceed the deficit created in the first and fourth quarters, allowing those credits to be sold.

Thus, as a result of the combined effects of seasonal gasoline quality and the provisions of the Complex Model, the current manner in which NO_X benefit and deficit are determined can cause a refiner with an alternative compliance period to expend capital, on a regular basis, to purchase credits to cover NO_X deficits caused by the production of winter gasoline in the first and fourth quarters and to then be able to, regularly, sell those credits back following production of a mix of summer and winter gasoline in the second and third quarters.

EPA believes that today's proposed rule, which would modify the equations at § 80.101(k)(3) used to calculate the quarterly NO_X deficit or benefit, would not change the environmental protection aspects intended under § 80.101(k) and would facilitate start-up refineries' ability to install sulfur reducing technology and introduce cleaner gasoline to the market sooner. For the limited application of determining an approved refiner's quarterly NO_X deficit or benefit for purposes of determining the refinery's obligations regarding the purchase of collateral NO_X credits, today's proposed rule would provide that the refiner's quarterly NO_X emissions will be compared to a quarterly NO_X emissions value rather than to the annual statutory baseline NO_X emissions value. The quarterly and annual NO_X values (to which the refinery's NO_X emissions are compared) are based on the statutory NO_X seasonal values. A memo detailing the calculation of quarterly NO_X values has been placed in the docket.

Additionally, the September 8, 2000 rule omitted the requirement that quarterly reports be signed and certified by the owner or a responsible corporate officer of the refinery. This requirement is included in other fuels programs that have periodic compliance reporting. This proposed rule would correct the previous omission and require that quarterly reports be appropriately signed and certified.

D. Use of Conventional Gasoline Baseline Toxics Requirement as MSAT Baseline

This proposed rule would allow a refinery with an approved alternative anti-dumping compliance period to petition EPA to substitute the anti-dumping statutory baseline toxic value for the mobile source air toxics (MSAT) default toxics baseline for some or all of a refinery's alternative anti-dumping compliance period. On March 29, 2001, EPA published a rule for the control of emissions of hazardous air pollutants from mobile sources.[12] This rule is generally known as the Mobile Source Air Toxics, or ''MSAT,'' rule. This rule requires that the average toxics emissions of gasoline produced or imported during each annual averaging period not exceed the average toxics emissions of gasoline produced or imported during the baseline period 1998–2000. Toxics emissions must be determined on a refinery or importer basis, and must be determined separately for reformulated gasoline and conventional gasoline.

The MSAT regulations specify that a refinery or importer must determine a unique individual baseline if it has data on gasoline produced or imported over at least a 12 month period between January 1, 1998 and December 31, 2000. The regulations further specify that a refinery or importer which does not have the appropriate gasoline data shall have the default baseline values specified at 40 CFR 80.855(b)(1). The default baseline values represent the national average toxics performance values of gasoline produced and imported during the baseline period.

The regulations governing the alternative anti-dumping averaging provisions at § 80.101(k) provide for

[11] The annual statutory baseline value for NO_X emissions is 1461 milligrams per mile (mg/mile). (*See* § 80.91(c)(5)(iv).) The summer and winter statutory baseline values for NO_X are 1340 and 1540 mg/mile, respectively. These were determined by inputting the summer and winter statutory baseline fuel parameters into the summer or winter Complex Model, respectively. (*See* § 80.45(b).) The annual statutory NO_X baseline emissions value was determined from the weighting of the summer and winter baseline emissions using a 0.396 fraction of summer and a 0.604 fraction of winter gasoline.

[12] 66 FR 17230.

approved refiners to have the anti-dumping statutory baseline exhaust toxics emissions values specified at § 80.91(c)(5) as their anti-dumping standard. As discussed above, the alternative anti-dumping averaging regulations were finalized on September 8, 2000, and apply to refiners which had never produced gasoline subject to the anti-dumping requirements. Thus, a refiner approved for an alternative anti-dumping averaging period would not meet the 12 month requirement for establishing an individual MSAT baseline, and would be subject to the MSAT default baseline values at § 80.855(b)(1). The conventional gasoline MSAT default baseline toxics performance value of approximately 94 mg/mile is a more stringent standard than the anti-dumping statutory baseline value of approximately 104 mg/mile.

The intent of the alternative averaging period provisions is to provide additional flexibility to approved refiners during the start-up of a refinery. The September 8, 2000, rule specifically excluded a start-up refinery's inability to meet its anti-dumping toxics standard as cause to petition for an alternative averaging period because the refinery units which impact benzene and aromatics (the primary fuel components affecting toxics performance) are different than those used to reduce sulfur (which leads to reduced NO_X emissions). However, in that rule, EPA also required petitioning refiners to include a detailed description of the current and future state of the refinery equipment (processing units). During the course of adding refinery processing units and bringing them up to normal operational levels, gasoline quality can fluctuate significantly. The operational levels and throughput of the processing units is dependent on the target standard(s). Refinery process units produce a variety of blendstocks which have a wide range of properties. Some blendstocks are higher in sulfur or olefins, fuel parameters which significantly affect NO_X emissions. Other blendstocks are higher in benzene and aromatics, two fuel parameters which contribute significantly to toxics performance as determined by the Complex Model. If a processing unit which produces a blendstock stream high in benzene or aromatics is put into operation first, toxics levels would be expected to be higher than when the gasoline is composed of many blendstocks, including those blendstocks with low benzene and aromatics levels which will dilute the high benzene and aromatics blendstocks' effect on toxics performance.

Because of the variations in gasoline fuel quality that can occur during startup (as streams are added and then brought to normal operational levels), EPA believes that some start-up refineries may not be able to achieve the MSAT default baseline toxics performance, and that it may be appropriate for EPA to allow a refiner with an approved alternative anti-dumping averaging period to comply with the less stringent anti-dumping statutory baseline value as its conventional gasoline MSAT standard for some or all of its alternative averaging period. We propose to require that the refiner petition EPA for approval to use the anti-dumping statutory baseline value as its MSAT compliance baseline for a limited period of time not to exceed its alternative anti-dumping period. The refiner would have to specify the cost and/or technological constraints that make it infeasible for the refinery to achieve compliance with the MSAT compliance baseline value specified in § 80.855(b), and the expected time-line for achieving compliance with that requirement (including achievable incremental improvements in toxics performance). We propose that, when EPA approves a refiner's petition, it will establish a date by which the refinery must comply with the MSAT default baseline. Upon expiration of the period during which the refinery may use the anti-dumping statutory baseline toxics value as its MSAT compliance baseline, the refinery would be subject to the MSAT compliance baseline value specified at § 80.855(b). We believe that requiring the refiner to specify its technological and cost constraints, and basing the approval of such a petition on that information, is consistent with the Clean Air Act requirement at 202(l)(2).

E. Effects of Today's Proposed Rule

The environmental effects of today's proposed rule would be minimal, as only one refinery has received an approved alternative anti-dumping averaging period so far. No new refineries have been constructed since 1997, and only five refineries have been reactivated since 1997.

The economic effects of today's action are likely to be positive, on a small, local scale. Refinery start-up, with a less stringent toxics standard, would be able to proceed more quickly. Additionally, the cost of complying with a more stringent standard would not be imposed, and thus would not be passed on to consumers.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

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

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

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

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

This proposed rule is not a significant regulatory action within the meaning of the Executive Order. It would not have an annual effect on the economy of $100 million or more and it is not expected to have any adverse economic effects as described in the Order. This proposed rule does not raise issues of consistency with the actions taken or planned by other agencies, will not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

B. Paperwork Reduction Act

This proposed rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's proposed rule would only permit more flexibility to parties under an existing petitioning process for anti-dumping. OMB has approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and has assigned OMB control number 2060–0277. To the extent that this rule affects the MSAT provisions, the OMB control number for the information requirements will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR. The information requirements are not enforceable until OMB approves them.

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.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's proposed 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.

This proposed rule would grant small entities that are start-up refineries additional flexibility for purposes of meeting the existing NO_X performance requirements under the conventional gasoline anti-dumping program and the toxics baseline under the mobile source air toxics (MSAT) program. In general, this proposed rule would allow small start-up refineries to apply for an alternative anti-dumping averaging period of up to seven years. It would allow refineries with an alternative averaging period to purchase NO_X credits to provide the required annual average over-compliance by the end of the extended compliance period, instead of requiring actual NO_X performance over-compliance. Today's proposed rule would allow refiners with an alternative averaging period to petition to have the annual average anti-dumping statutory toxics baseline as their MSAT baseline for some or all of an extended averaging period. Therefore, today's proposed rule would relieve existing regulatory burdens for small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local or tribal governments or the private sector. This proposed rule would impose no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It would 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 rule would permit start-up refineries reasonable flexibility in meeting anti-dumping and MSAT requirements. Thus, Executive Order 13132 does not apply to this proposed rule.

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

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This proposed rule does not have tribal implications. It would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This proposed rule applies to start-up refineries, including small businesses and grants reasonable flexibility in meeting anti-dumping and MSAT

requirements. This proposed rule, if adopted, would modify the Federal anti-dumping and MSAT requirements, but does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this proposed rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use

This proposed rule is not an economically ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it does not have a significant adverse effect on the supply, distribution, or use of energy. If adopted, this proposed rule would allow additional flexibility in meeting alternative anti-dumping compliance periods.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Statutory Authority

Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)). Today's proposed rule, and each element of today's action, including the promulgation or revision of regulations pertaining to fuels and fuel additives under section 211 of the Clean Air Act constitutes rulemaking under Clean Air Act section 307(d). *See* 42 U.S.C. 7606(d)(1).

List of Subjects in 40 CFR Part 80

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

Dated: April 25, 2003.

Christine Todd Whitman,

Administrator.

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 is proposed to continue to read as follows:

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

2. Section 80.101 is proposed to be amended by revising paragraphs (a), (k)(3)(i) through (k)(3)(iii), (k)(3)(vi)(B)(2) and (3), (k)(3)(viii), and (k)(6)(iv), and adding paragraph (l) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(a) *Averaging period.* The averaging period for the standards specified in this section shall be January 1 through December 31, except as provided in paragraphs (k) and (l) of this section.

* * * * *

(k) * * *

(3) * * *

(i) A refinery shall meet the following deadlines for compliance with the stautory baseline, depending on the length of the alternative averaging period applicable to the refinery:

Length of compliance period in years	Compliance period must start no later than January 1st of	Refinery must comply with the statutory baseline NO_X standard, on average, for gasoline produced beginning with the . . .
2	2004	7th quarter and all subsequent quarters.
3	2003	10th quarter and all subsequent quarters.
4	2002	13th quarter and all subsequent quarters.
5	2001	16th quarter and all subsequent quarters.

(ii)(A) By the end of the applicable alternative averaging period, the refinery must generate a net NO_X benefit (compared to the statutory baseline) that is at least twice as large as the total NO_X deficit generated during the period of time during which the refiner produced gasoline that did not comply with the statutory baseline.

(B) At least one-half of the total NO_X benefit required under paragraph (k)(3)(ii)(A) of this section must be generated by production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO_X standard, as calculated on a quarterly basis in accordance with the provision of this paragraph (k)(3)(ii) of this section.

(C) Any portion of the total NO_X benefit beyond that portion described under paragraph (k)(3)(ii)(B) of this section may come from either the

production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO_X standard, as calculated on a quarterly basis, or from the purchase and retirement of stationary source NO_X credits or allowances, as provided in paragraph (k)(3)(iii) of this section.

(D) For the purposes of this §§ 80.101(k) and 80.101(l), the NO_X deficit in tons shall be calculated in accordance with the following equation:

$$NO_{XDef} = (NO_{Xad} - NO_{Xsea})* Gd*2.7 \times 10^{-8}$$

Where:

NO_{XDef} = the NO_X deficit, in tons, for a calendar quarter in which the refiner's NO_X performance for that quarter exceeds NO_{Xsea}.

NO_{Xad} = the average volume weighted NO_X emissions performance, in mg/mile, for a calendar quarter in which the refiner exceeds NO_{Xsea}.

NO_{Xsea} = quarterly statutory NO_X performance values. First calendar quarter = 1540 mg/mile; Second calendar quarter = 1383 mg/mile; Third calendar quarter = 1381 mg/mile; Fourth calendar quarter = 1540 mg/mile.

Gd = the volume of gasoline produced during a quarter in which the refiner exceeds the applicable NO_X standard, measured in gallons.

(E) For the purposes of this §§ 80.101(k) and 80.101(l), the NO_X benefit in tons shall be calculated in accordance with the following equation:

$$NO_{XBen} = (NO_{Xsea} - NO_{Xab})* Gd*2.7 \times 10^{-8}$$

Where:

NO_{XBen} = the NO_X benefit, in tons, for a calendar quarter in which the refiner's NO_X performance for that quarter is below NO_{Xsea}.

NO_{Xab} = the average volume weighted NO_X emissions performance, in mg/mile, for a calendar quarter in which the refiner is below NO_{Xsea}.

NO_{Xsea} = quarterly statutory NO_X performance values. First calendar quarter = 1540 mg/mile; Second calendar quarter = 1383 mg/mile; Third calendar quarter = 1381 mg/mile; Fourth calendar quarter = 1540 mg/mile.

G_b = the volume of gasoline produced during a quarter in which the refiner is below the applicable NO_X standard, measured in gallons.

(iii) NO_X Credits and Allowances. (A) Within 60 days of the end of each quarter for which the refinery produces gasoline for which there is a NO_X deficit, the refiner shall purchase stationary source NO_X credits or allowances that are equal to or greater than the amount of the NO_X deficit generated during the quarter, and provide written demonstration of such transaction to the Administrator. These NO_X credits or allowances are in addition to any NO_X credits or allowances purchased during any previous quarters. NO_X deficit is to be calculated on a quarterly basis in accordance with the equation in paragraph (k)(3)(ii)(D) of this section.

(B) No NO_X credits or allowances purchased by the refiner may contribute to the refinery's compliance with the requirements of paragraphs (k)(3)(ii)(B) of this section.

(C) The refinery may sell NO_X credits or allowances purchased under this paragraph (k)(3)(iii) only in an amount equal to or less than any NO_X benefit that the refinery generates subsequently through the production of conventional gasoline at the refinery that is cleaner than the statutory baseline NO_X standard, as calculated on a quarterly basis. A refiner may retire credits or allowances purchased under this paragraph (k)(3)(iii) at any time.

(D) For purposes of satisfying a refinery's obligations under paragraphs (k)(3)(ii)(C), (k)(3)(iii)(A) or (l)(6)(ii) of this section, any NO_X credits or allowances that a refiner purchases must have been validly generated as part of a state stationary source program covered by an approved state implementation plan (SIP) and must be current and marketable NO_X credits or allowances. It shall be the refiner's responsibility to ensure that NO_X credits or allowances are valid, current and marketable.

(E) In order to be retired, NO_X allowances or credits must be retired by EPA or the administering state agency, as provided for in the applicable state implementation plan (SIP). It shall be the refiner's responsibility to ensure that NO_X credits or allowances are actually retired and that retirement is reflected in the records of EPA or the administering state agency.

* * * * *

(vi) * * *

(B)(1) * * *

(2) A statement of the number of NO_X credits or allowances purchased, sold or retired during the quarter and a current total, based upon all quarters, indicating the current balance of NO_X credits or allowances; and

(3) Any contractual documents, or other documents, evidencing the purchasing, banking or retiring of NO_X credits or allowances.

(viii)(A) The refiner shall submit reports demonstrating compliance with deadline requirements under paragraph (k)(3)(vii) of this section no later than 30 days after the applicable deadline occurs. Upon failure to meet a deadline requirement under paragraph (k)(3)(vii) of this section, the Administrator may accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO_X standard under paragraph (k)(3)(i) or (l)(6)(i) of this section such that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. The acceleration of the requirement under paragraph (k)(3)(i) or (l)(6)(i) of this section, regarding compliance with the annual average statutory baseline NO_X standard, does not affect the applicability of any other standard or requirement applicable to the refinery under this or any other section of the Act (*e.g.*, the refinery must still comply with the overall alternative averaging period NO_X requirements in paragraph (k)(3)(ii) of this section).

(B) The reports required by this paragraph shall be on forms and following procedures specified by the Administrator of the EPA and signed and certified as correct by the owner or a responsible corporate officer of the refiner.

* * * * *

(6) * * *

(iv) No application may result in an alternative compliance period that extends beyond January 1, 2006, except as provided in paragraph (l) of this section.

* * * * *

(l) *Special alternative anti-dumping averaging period provisions for small refineries.*

(1) *Eligibility for petition.* A refiner who has been granted small refiner status under § 80.235 and who meets the eligibility requirements in paragraph (k)(1) of this section may petition for an alternative compliance period that is greater than five years and/or that extends beyond January 1, 2006, provided that such application is submitted by January 1, 2004. No application under this paragraph (l) may result in an alternative compliance period that extends beyond January 1, 2008.

(2) *Application process.* Applications must be submitted to the Administrator by January 1, 2004 to the following address: U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (certified mail/return receipt) or U.S. EPA—Attn: Anti-

Dumping Compliance Period (6406J), Transportation & Regional Programs Division, 501 3rd Street, NW., Washington, DC 20001 (express mail/ return receipt).

(3) *Contents of the application petition.* Each petition must include:

(i) The information and signed statements specified for all petitioners under § 80.101(k)(2);

(ii) A description of the hardships that make it infeasible, on a cost and/or technological basis, for the refinery to comply with an alternative anti-dumping compliance baseline of five years or less, or that ends on or before January 1, 2006.

(iii) A quarterly timeline, from the date of the application, indicating the expected NO_X emissions performance of the refinery's conventional gasoline, and the reasons for any expected non-compliance with the statutory baseline standard for NO_X on a quarterly basis (for example, a particular gasoline blendstock-producing unit not yet installed). The timeline shall include the date by which the refinery will produce conventional gasoline that complies with the annual average statutory NO_X baseline on a quarterly basis as determined according to § 80.101(k)(3)(ii).

(iv) A demonstration that the conditions for which the refinery was granted small refiner status under § 80.235 are still applicable.

(v) Information already submitted to the Administrator as part of a prior petition under paragraph (k) of this section, shall be updated if applicable.

(4) *Approval or disapproval of petitions.* The Administrator may approve a petition under this paragraph (l) if it includes information sufficient to demonstrate to the Administrator's satisfaction that cost and/or technological constraints make it infeasible for the refinery to comply with an alternative anti-dumping compliance baseline of five years or less, or that ends on or before January 1, 2006. The Administrator will approve or deny the petition in writing within six months of receipt. An approval will include any conditions or requirements to which the approval is subject.

(5) *Cessation of Extended Alternative Compliance Period.*

(i) Refineries that qualify as small under § 80.223, and that later are disqualified under § 80.230(b), will be subject to the statutory anti-dumping baseline on an annual average basis beginning the calendar year immediately following the refinery's change in status.

(ii) If the Administrator finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from the Administrator, the refiner's extended alternative compliance period will be void ab initio.

(6) *Compliance requirements for qualifying small refiners.*

(i) If the refiner's application for an extended compliance period under this paragraph (l) is approved, then the refinery must comply with the statutory baseline NO_X standard, on average, for gasoline produced beginning by not later than the 19th quarter (for a six year compliance period) or by no later than the 22nd quarter (for a seven year compliance period).

(ii) The refinery must meet all other applicable requirements in paragraph (k) of this section, including the production of a net NO_X benefit under paragraph (k)(3)(ii) of this section, except that the following provisions shall apply:

(A) For any cumulative NO_X deficit remaining at the expiration of the fifth year, based on the NO_X emission performance of gasoline actually produced at the refinery, and as calculated under paragraph (k)(3)(ii) of this section, the refiner shall provide an additional NO_X benefit equal to one half ton of NO_X emissions per ton of deficit remaining by the end of the refinery's alternative anti-dumping averaging period.

(B) For any cumulative NO_X deficit remaining at the expiration of the sixth year, based on the NO_X emission performance of gasoline actually produced at the refinery, and as calculated under paragraph (k)(3)(ii) of this section, the refiner shall provide an additional NO_X benefit equal to one ton of NO_X emissions per ton of deficit remaining by the end of the refinery's alternative anti-dumping averaging period.

(C) The additional NO_X benefits required under this paragraph (l)(6)(ii) may come from the production of gasoline at the refinery that is cleaner than the statutory baseline or from the purchase and retirement of stationary source NO_X credits or allowances as provided in paragraph (k)(3)(iii) of this section.

3. Paragraph (c) is added to § 80.855 to read as follows:

§ 80.855 How is the compliance baseline determined?

* * * * *

(c)(1) *Eligibility to petition.* A refiner who has been granted an alternative anti-dumping averaging period under § 80.101(k) may petition the Administrator to have the statutory baseline exhaust toxics emissions, Phase II value specified in § 80.91(c)(5)(iv) as its compliance baseline for the purposes of this subpart J for one or more of the years of the refiner's approved alternative anti-dumping averaging period.

(2) *Application process.* Applications must be submitted to the Administrator by January 1, 2004 to the following address: U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (certified mail/ return receipt) or U.S. EPA—Attn: Anti-Dumping Compliance Period (6406J), Transportation & Regional Programs Division, 501 3rd Street, NW., Washington, DC 20001 (express mail/ return receipt).

(3) *Contents of the application petition.* Each petition must include:

(i) A copy of the refinery's approval for an alternative averaging period under § 80.101(k).

(ii) A description of the hardships that make it infeasible, on a cost and/or technological basis, for the refinery to comply with the compliance baseline specified in paragraph (b) of this section.

(iii) A quarterly timeline, from the date of the application, indicating the expected exhaust toxics emissions performance of the refinery's conventional gasoline, and the reasons for any expected non-compliance with the compliance baseline specified in paragraph (b) of this section (for example, a particular gasoline blendstock-producing unit not yet installed). The timeline shall include the date by which the refinery will produce conventional gasoline that complies with the baseline specified in paragraph (b) of this section on an annual average basis.

(4) *Approval or disapproval of petitions.* (i) The Administrator may approve a petition if it includes information sufficient to demonstrate to the Administrator's satisfaction that cost and/or technological constraints make it infeasible for the refinery to comply with the baseline specified in paragraph (b) of this section. The Administrator will approve or deny a petition in writing within six months of receipt.

(ii)(A) Each approval will specify the date by which the refinery must comply with the baseline specified in paragraph (b) of this section. No petition approval shall allow for use of the statutory baseline exhaust toxics emissions, Phase II value as a refinery's compliance baseline under this subpart J beyond the last day of a refinery's alternative anti-dumping averaging period under § 80.101(k) or § 80.101(l).

(B) An approval may include any conditions or other requirements to which the approval is subject.

(5) *Effective date for petition.* (i) Beginning with the averaging period immediately following the end of the approved period under paragraph (c)(4) of this section, the compliance baseline for the purposes of this subpart J shall be as specified in paragraph (b) of this section.

(ii) Notwithstanding the requirement specified in paragraph (c)(5)(i) of this section, if at any time the alternative compliance period approved under § 80.101(k) or § 80.101(l) ceases to apply, the approval granted under this paragraph (c) shall also cease to apply.

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