a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 2000–204–309(B), dated May 17, 2000.

Issued in Renton, Washington, on September 1, 2000.

Donald L. Riggin,

Acting Manager,, Transport Airplane Directorate, Aircraft Certification Service.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6864–9]

Establishment of Alternative Compliance Periods Under the Anti-Dumping Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Clean Air Act as amended in 1990 (''the Act'') directs the Environmental Protection Agency (''EPA'' or ''we'') to issue regulations requiring reformulated gasoline for major metropolitan areas with the worst ozone air pollution problems. Other areas with ozone levels exceeding the public health standards may voluntarily choose to participate in the federal reformulated gasoline program. In order to ensure that the ''dirtier'' components of reformulated gasoline are not dumped into gasoline sold in areas not participating in the reformulated gasoline program (''conventional gasoline'' areas), the Act requires EPA to ensure that the quality of conventional gasoline does not fall below 1990 levels. The Act also mandates that we establish an appropriate compliance period or compliance periods associated with meeting the anti-dumping standards. Under the existing regulations for reformulated gasoline and anti-dumping, the compliance period is one year. However, we believe that in certain limited circumstances a longer conventional gasoline anti-dumping may be appropriate on a temporary basis. Such an alternative compliance period would be only appropriate for a refiner who produces conventional gasoline and who is starting up a refinery and facing significant hardship in complying with the anti-dumping statutory baseline NO_X standard. Moreover, we believe that it would be appropiate for any refinery subject to an alternative compliance period to meet additional substantive and administrative requirements to ensure that there is no environmental detriment as a result of the longer averaging period. This notice of proposed rulemaking sets forth proposed procedures for establishing alternative compliance periods under the anti-dumping program and the proposed standards applicable to refineries operating under such compliance periods.

DATES: Comments or a request for a public hearing must be received by October 10, 2000.

ADDRESSES: If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW. (6406J), Washington, DC 20460, (202) 564–8987. Materials relevant to this proposed rule have been placed in docket A–2000–27 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. You may be charged a reasonable fee for photocopying services.

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.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

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

Category	Examples
Industry	Gasoline refiners

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists all entities that we are now aware could potentially be regulated by this proposed action. Other types of entities not listed in this table could also be regulated by this proposed action. To determine whether your business would be regulated by this proposed 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 proposed action to a particular entity, consult the person listed in the preceding section of this document.

II. Background

This section summarizes the anti-dumping program. Since refiners who request flexibility under today's proposed rule are likely to elect to use sulfur-reducing technologies early in order to meet production requirements under this proposed rule, a brief overview of the Tier 2 gasoline program is included as well.

The Anti-Dumping Program

The Clean Air Act required EPA to establish rules for reformulated gasoline (RG) designed to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants. Reformulated gasoline is required to be used in specific metropolitan areas with the worst ozone problems. Several other areas with ozone levels exceeding the public health standard have voluntarily chosen to use RFG. 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 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 a specific ''baseline'' year. The baseline reference year specified in the Act is 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 specifications, or parameters, of a gasoline blend to calculate which 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, or RVP.

[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.

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 specification 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 Part 80.91(c)(5). There is no individual baseline volume for those refineries or importers for which the statutory baseline is the individual baseline.

Compliance with the anti-dumping requirements is 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 batch are volume-weighted to determine the annual average exhaust toxics and NO_X emissions for the refinery or importer. The resulting annual average emissions are compared to the 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, we have established a one year compliance period for anti-dumping. A one year compliance period is consistent with other fuels programs utilizing averaging and annual reporting, including the RFG program. Generally, a one year compliance period is desirable because it provides an effective monitoring period for environmental purposes while permitting flexibility with respect to averaging over the calendar year. A one year period gives more assurance that gross violations will not occur before the violation is discovered and appropriate action is taken and that those responsible for the violation are held accountable. A one year period prevents a company from violating for several years, generating a long-term environmental detriment, and then going out of business before it can be held accountable. A one year period is also simple for compliance accounting purposes. Although we chose the one year compliance period for the reasons just mentioned, we recognize that the Act permits us to establish alternative anti-dumping compliance periods by regulation.

Tier 2 Gasoline

Since the passage of the 1990 Clean Air Act Amendments, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks through implementation of programs like RFG and anti-dumping. Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light duty trucks will continue to be significant contributors to air pollution. In light of this trend and to build upon programs aimed at reducing emissions from motor vehicles and motor vehicle fuels, EPA recently issued regulations establishing lower sulfur content for all gasoline [2] (*i.e.,* ''Tier 2 gasoline'') and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, and vans and pick-up trucks under 8,500 lbs. The Tier 2 program will also reduce ozone and particulate matter (PM) pollution. Gasoline sulfur levels significantly affect NO_X emissions. Since NO_X emissions are ozone precursors, a reduction in the sulfur level of gasoline will reduce ozone pollution. The level of gasoline sulfur control required under the Tier 2 program will also benefit the environment by directly reducing emissions of sulfur compounds.

The Tier 2 gasoline standards will be fully implemented by 2006 by all refiners except for those subject to geographic phase-in area (GPA) requirements, who have until 2007, and certain other qualifying refiners, who have until 2008. (If a hardship extension is granted, an individual refiner may have until 2010 to meet the final standards.) The Tier 2 program is structured to permit averaging in order to meet the sulfur standard, with an average sulfur content standard of 30 ppm and a per gallon sulfur limit of 80 ppm by the date of full implementation. Benefits from the Tier 2 gasoline program may be seen more immediately, as some refiners are expected to start lowering sulfur levels as early as this year. Those who lead the way in reducing sulfur earlier than required may generate marketable credits or allotments. As with the RFG and anti-dumping programs, compliance is demonstrated based upon a one year compliance period.

III. Today's Proposed Action

Need for and Purpose of Today's Proposed Action

As discussed above, section 211(k)(8)(D) of the Act directs EPA to establish an appropriate compliance period or compliance periods for the purpose of assessing compliance with anti-dumping requirements. At the present time, the only compliance period that has been established for anti-dumping is a one year compliance period. The one year compliance period is consistent with the one year period established under other existing fuels programs and, at the time the anti-dumping regulations were developed, there was no compelling reason or identified benefit to specifying any alternative compliance period.

We believe that achieving the Tier 2 gasoline sulfur reductions, at the refinery level, as soon as possible is an extremely valuable mechanism for reducing vehicle emissions, perhaps more so than any other recently promulgated gasoline regulation. We are also aware of at least one refinery in a start-up mode which would be able to achieve the applicable Tier 2 gasoline sulfur reductions earlier than required, but would not be able to comply with its anti-dumping standard, which is the statutory baseline, in early production years. In order to comply with its anti-dumping standard, the refiner would have to delay the start-up process and significantly delay the time frame in which it could produce gasoline meeting the Tier 2 gasoline sulfur standards.

Because we believe that achieving the Tier 2 gasoline sulfur levels is critical to reducing ozone levels by reducing emissions of the ozone precursor NO_X (see the discussion in ''Summary of Today's Proposed Action'' below), we

[2] ''Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule,'' 65 FR 6698 (February 10, 2000). See also 40 CFR part 80, subpart H for regulations applicable to gasoline sulfur.

believe it would be appropriate to allow an alternative anti-dumping compliance period for a refinery in start-up mode, provided that the refiner can show that the refinery will achieve the Tier 2 gasoline sulfur levels earlier than otherwise required. At the same time, we want to ensure that no environmental detriment occurs as a result of the flexibility we are providing, and have included other requirements the refinery would have to meet which will provide the appropriate environmental protection. The details of the proposed flexibility are described below.

Summary of Today's Proposed Action

We are proposing to permit a refinery in start-up mode which is unable to meet its anti-dumping standard during the start-up process, but which would otherwise be able to meet the Tier 2 gasoline sulfur standards earlier than required, to petition the Agency for an alternative compliance period. The Tier 2 standards for most refiners take effect in 2006. (See ''Tier 2 Gasoline,'' above, for a more detailed discussion of refiner compliance dates.) A refinery eligible for this proposed relief must be starting up production of conventional gasoline and must never have produced conventional gasoline that was subject to the anti-dumping regulations. To ensure that the refinery will meet the applicable Tier 2 gasoline standards early, the alternative compliance period would be limited to a two to five year span, as determined by the Agency. Because of the other requirements associated with this proposed rule, we believe that a refinery would choose to request the shortest alternative compliance period possible. Additionally, a refiner would have to show that it would be unable to meet its anti-dumping NO_X requirement under the current, one year compliance period. While the anti-dumping standard for a refinery involves both exhaust toxics and NO_X emissions, we believe that the proposed alternative compliance period should only be available to a refinery upon a showing that it would otherwise be unable to meet its NO_X standard. This is because sulfur significantly affects NO_X emissions,[3] and decreasing sulfur will result in significant NO_X emission reductions by moving toward the goal of the low sulfur levels required by the Tier 2 standards. Though a refiner may have difficulty meeting its exhaust toxics anti-dumping standard, for which fuel benzene and aromatics are the primary fuel parameters, the refinery units which impact these two fuel parameters are different than those used to reduce sulfur. (Most refineries will need to install new equipment in order to reduce sulfur to the levels required under the Tier 2 standards.) Thus, reducing benzene and/or aromatics does not contribute to the goal of achieving the Tier 2 gasoline sulfur levels early, and, consequently, an alternative compliance period based on the inability to meet the anti-dumping exhaust toxics standard would not be appropriate given the considerations underlying today's proposed rule.

In addition to meeting the Tier 2 gasoline sulfur standards early, the gasoline produced by a refinery over the entire alternative compliance period would have to result in 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 refinery produced gasoline that did not comply with the statutory baseline. Additionally, the refiner would have to purchase stationary source NO_X credits sufficient to offset any NO_X deficit generated (on a quarterly basis) and would have to meet the specific requirements of this proposed rule, including additional reporting requirements. By proposing to modify the standards applicable to refineries with an alternative compliance period, we are providing appropriate assurance that no environmental disbenefit occurs as a result of allowing an alternative compliance period.

When regulated entities cut emissions more than is required, the ''extra'' environmental benefit may be considered as a pollution credit, usually measured in tons, that may be sold or banked for future use. Emissions trading associations have been created to facilitate the buying and selling of pollution credits. Marketable NO_X credits are currently generated through NO_X reduction programs in 13 states. In addition, there is a multi-state NO_X emission trading program operating in eight Northeastern states that are members of the Ozone Transport Commission. Further information on NO_X trading programs is available on the Internet at www.epa.gov/acidrain/programs.html.

As described below in ''How the Agency Proposes to Act on a Petition'' and ''The Refiner's Proposed Responsibilities if a Petition is Granted,'' NO_X credits purchased quarterly to offset any NO_X deficit must be held by a refinery that operates under an adjusted compliance period under this proposed rule. These banked credits function as collateral against any NO_X deficiencies that the refiner creates, to minimize the possibility of environmental harm in the event that the refiner does not fulfill its obligation under the other requirements of this proposed rule. If, as planned, the refinery eventually produces gasoline that meets and then exceeds the NO_X baseline, the refiner may sell NO_X credits equal to the benefit produced during that quarter. If the refinery violates the conditions under which its petition is granted, the NO_X credits may be forfeited. The intention of this proposed provision is that environment will suffer no net loss, although any NO_X deficit may occur in a different location than a NO_X credit was generated. Much of the gasoline in the U.S. is produced on the Gulf Coast and other coastal areas and shipped throughout the country, primarily by pipeline. Gasoline is fungible, and is normally transported in pipelines mixed with other batches that meet the same specifications. In general, it is not possible to predict where a particular batch of gasoline included in larger shipment will end up; as a result, it is not generally possible to predict where a NO_X deficit may occur. Similarly, it is not possible to predict where the air quality benefit from the doubled payback of any NO_X deficit will occur.

Who May Petition for an Alternative Anti-Dumping Compliance Period

Under this proposed rule, a refiner may petition EPA for an alternative compliance period for any refinery that is starting up gasoline production for the first time under the anti-dumping requirements, that is subject to the statutory baseline, and that can demonstrate a significant hardship with regard to producing gasoline conforming to the statutory baseline for NO_X in the early years of production. Flexibility with regard to alternative anti-dumping compliance periods will be particularly helpful for challenged refiners (as described in the Tier 2 gasoline sulfur rule), including small refiners; however, any refiner who meets the threshold conditions above would be able to submit a petition. The petition may be for a domestic or foreign refinery. The refiner would have to have specific plans to bring its gasoline into compliance with the statutory baseline early enough through the alternative compliance period in order to achieve the two-fold NO_X payback. Furthermore, the refiner would have to have specific and demonstrable plans to produce gasoline to pay back any NO_X deficit by the end of the requested compliance

[3] Under the Complex Model, the tool used to evaluate anti-dumping performance, olefins is the other fuel parameter which significantly impacts NO_X emissions.

period. For many refiners, these plans would likely include early installation of sulfur-reducing technologies necessary to meet the Tier 2 gasoline standards.

When Would Petitions Have To Be Received By?

A refiner who meets the threshold conditions would be able to petition the Agency for an alternative anti-dumping compliance period. For reasons discussed in the preceding sections, we believe that the window during which this flexibility is appropriate is the period before the Tier 2 gasoline program standards fully apply. Therefore, petitions for alternative anti-dumping compliance periods of four or five years in length would have to be received by no later than June 1, 2001. For an alternative compliance period of two or three years in length, the petition would have to be received no later than June 1, 2003. No alternative anti-dumping compliance period may be designed to start, or requested to start, after January 1, 2004 or to end after December 31, 2005.

What a Petition for an Alternative Anti-Dumping Compliance Period Would Have To Contain

A refiner would be able to petition for an alternative anti-dumping compliance period of two, three, four, or five years in length. The petition would have to contain, at a minimum:

- The business name and address and any location(s) where the refiner conducts operations.
- The name and contact information for the responsible corporate officer and a contact person who can provide further clarification with regard to information in the petition.
- A detailed explanation of why the refinery is eligible to request an alternative anti-dumping compliance period. This explanation would include documentation showing that the refinery is starting up production and has never produced conventional gasoline subject to the anti-dumping regulations and information demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO_X standard.
- The length of the averaging period requested (2, 3, 4, or 5 years) and a justification for why that length of averaging period is required.
- An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO_X.
- The refinery's estimated gasoline production and average NO_X level for each of the years in which the alternative averaging period is required.
- A detailed description of the current refinery equipment and configuration.
- A detailed description of any changes or enhancements to the refinery equipment and configuration that will occur during the alternative averaging period requested.
- The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).
- A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.
- A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO_X credits sufficient to offset the maximum projected NO_X deficit. An equation for calculating the NO_X deficit and NO_X benefit is included in the regulations.
- A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.
- A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.
- Any other information the Administrator may require in order to fully evaluate the refiner's petition. Such information would include requests for clarification of any item(s) included in the petition that is necessary in order to render a final decision as to whether to grant or reject the petition.

The above items represent, at a minimum, the topics that we believe must be addressed in the petition. The refiner may wish to elaborate on certain topics—*e.g.,* if it faces particular hardship because it is a small business or if its refinery faces other, unique challenges that may influence the Agency's decision on the petition.

If we were to find that any refiner has provided false or inaccurate information in connection with its petition, we propose that the remedy be to notify the refiner and the application of any alternative anti-dumping compliance period would be *void ab initio.*

How the Agency Proposes To Act on a Petition and the Refiner's Proposed Responsibilities if a Petition Is Granted

Notification of Approval and Disapproval of Petition and Proposed Dates By Which the Refinery Would Have To Meet the Statutory NO_X Baseline Standard and Pay Back Double the NO_X Deficit

We propose to notify a refiner of approval or disapproval of its petition by mail after considering a complete petition. If approved, we propose to notify the refiner of the alternative anti-dumping compliance period approved (*i.e.*, two, three, four, or five years) and the interim standards that would have to be met. The interim standards would be as set forth in the regulations and would include two major standards that the refinery would have to meet. The first standard sets forth the date by which the refinery would have to start to comply with the statutory baseline NO_X standard, on average, for all its gasoline. For example, for a two year averaging period, the refiner would have to hit the first interim standard by the seventh quarter. Once the first date is reached, the refiner would have to continue to meet the statutory baseline standard for NO_X, on average, for all gasoline it produces.

The second standard would set forth the date by which the refinery would have to pay back double the NO_X deficit. This date would correspond to the end of the alternative averaging period. For example, for a two year averaging period, the refiner would have to pay back double the NO_X deficit by the end of the second year. Failure to meet one of these standards would result in a violation of the anti-dumping regulations. The anti-dumping standards, including NO_X emissions, are defined in units of milligrams per mile. In order to quantify the NO_X deficit or benefit in tons under today's proposed rule, it is necessary to know the variance from the standard, the volume of gasoline involved and the average fuel economy for the overall national fleet of gasoline powered vehicles. For the purpose of these calculations, we are proposing to use the most current data as presented in the Calendar Year 1999 National Highway Traffic and Safety Administration report to Congress of 24.5 miles per gallon. Thus the constant figure in both equations of 2.7×10^{-8} is the product of the above fuel economy factor and the conversion from milligrams to tons. The average NO_X level and volume of gasoline produced during the quarter are self explanatory. The equations for calculating NO_X

deficit and benefit are proposed to be as follows:

NO_X Deficit:

$$NO_{X_{Def}} = \left(NO_{X_{ad}} - 1461\right) * G_d * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Def}}$ = the NO_X deficit for the quarter(s) the refiner's annual average NO_X performance exceeds the applicable NO_X standard of 1461 mg/mile, expressed in tons.

$NO_{X_{ad}}$ = the average volume weighted NO_X emissions performance for the quarter(s) the refiner exceeds the applicable NO_X standard, measured in mg/mile.

G_d = the volume of gasoline produced during the quarter(s) the refiner exceeds the applicable NO_X standard, measured in gallons.

NO_X Benefit:

$$NO_{X_{Ben}} = \left(1461 - NO_{X_{ab}}\right) * G_b * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Ben}}$ = the NO_X benefit during the quarter(s) the refiner's annual average NO_X performance is below the applicable NO_X standard of 1461 mg/mile.

$NO_{X_{ab}}$ = the average volume weighted NO_X emissions performance for the quarter(s) the refiner is below the applicable NO_X standard, measured in mg/mile.

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

The calculations would be performed on a quarterly basis. As an example, a 10,000 barrel per day refinery would produce 37.8 million gallons during a given quarter. Assuming the gasoline, on average, met a NO_X standard of 1500 mg/mi, the total NO_X deficit for the quarter would be

$$39.8 \text{ tons} = (1500 - 1461) * 37{,}800{,}000 * 2.7 \times 10^{-8}$$

As an example of how the NO_X deficit would have to be paid back on a two for one basis, assume that the same refinery has a two year alternative averaging period. Assuming that the refinery were to produce the same quality and volume of gasoline for the first five quarters and then began to produce gasoline meeting the statutory baseline (in order to meet the first standard), the total NO_X deficit, in tons, would be 199 tons. In order to meet the second standard, the paying back of double the NO_X deficit, the refiner would have to produce a total NO_X benefit of 199 * 2, or 398 tons of NO_X benefit. Thus, the alternative averaging period is designed to ensure that there is no overall environmental detriment by requiring a certain amount of NO_X overcompliance.

Interim Milestones

A refiner would be able to qualify for an extended averaging period only if, at the time of the petition, it activates a refinery that faces substantial demonstrated hardship in producing gasoline which meets the anti-dumping statutory baseline NO_X standards during the early years of production. EPA believes that this hardship is most likely to be the result of a lack of the necessary refinery processing equipment. Moreover, it would be necessary for such a refiner to obtain this processing equipment in order to begin producing gasoline that would allow the refinery to comply with the proposed overall alternative averaging period NO_X standard. However, if such a refiner were to fail to obtain this processing equipment in a timely manner it is likely the refiner will not be able to offset the NO_X deficit created during the first phase of the extended averaging period by the required compliance deadline.

For this reason EPA believes it is appropriate for a refiner who has been granted an extended averaging period to demonstrate that reasonable progress is being made toward obtaining necessary processing equipment. As a result, under today's proposed rule EPA is requiring refiners to include in extended averaging period petitions the expected dates for key milestones for obtaining necessary processing equipment. These milestones normally would include the dates for signing the contract for equipment design, for obtaining necessary permits, for obtaining financing commitments, and for breaking ground for construction. During the petition review EPA intends to evaluate the milestones proposed by the refiner and establish appropriate milestones that will be incorporated into any petition approval. The refiner would be required to submit reports to EPA demonstrating these milestones are met as a contingency for continued operation under the alternative compliance period.

Upon a refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, the Administrator would have the discretion to accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline $NONO_X$ standard, so 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. That is, a failure to meet a milestone may result in a requirement for the refinery to begin producing gasoline that complies with the statutory baseline beginning with the next quarterly averaging period and continuing thereafter. The acceleration of the requirement regarding compliance with the annual average statutory baseline NO_X standard would not affect any of the other standards or requirements applicable to the refinery under this section (*e.g.,* the refinery would still be required to comply with the overall alternative averaging period NO_X standard by producing gasoline that overcomplies with the annual average statutory NO_X standard by twice as much as the early NO_X deficit generated by the refinery). Moreover, upon the refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, we are proposing that the refiner would forfeit any NO_X credits that it was required to have banked as of that time. EPA realizes that a refiner in this situation may not be able to produce gasoline that meets the statutory baseline and may be forced to produce products other than gasoline, such as blendstocks, or to close the refinery. However, allowing such a refiner to generate additional NO_X deficits would only result in additional environmental harm.

Additional Requirements

In addition to the proposed requirements described in the preceding paragraph, the following general requirements are proposed to apply to a refinery for which a petition is granted:

- The refinery must meet all applicable statutory baseline standards for an annual average compliance period, except the standard for NO_X. For example, this means that the refinery would have to comply with the toxics standards on an annual basis.
- The refiner must designate all gasoline produced during the period of time that the refinery does not meet the annual average statutory baseline

standards as gasoline with a volatility of 9.0 pounds per square inch (psi).

• A refiner for which a petition is granted must provide a written demonstration that it has purchased and banked NO_X credits equal to the NO_X deficit calculated for the end of the preceding quarter and must retain these banked credits throughout the current quarter. The NO_X credits are necessary in order to guarantee that the refinery does not generate a net NO_X detriment. The amount of NO_X credits required to be banked will be calculated each quarter. When the refinery begins to produce conventional gasoline that, on average, meets the anti-dumping NO_X standard, it may sell NO_X credits off in an amount equal to any NO_X benefit generated in the preceding quarter. We believe that this approach permits more flexibility for the start-up refinery than an approach that would require them to make a significant up-front purchase of credits equal to the entire projected NO_X deficit for the alternative averaging period.

• A refinery for which a petition is granted may not generate any Tier 2 sulfur credits or allotments during the entire alternative anti-dumping compliance period.

• A refinery for which a petition is granted must submit anti-dumping compliance reports more frequently than other conventional gasoline refineries. This enhanced reporting will ensure that the refinery is on target with meeting the interim performance goals. The documents that must be submitted include quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter, and documents that demonstrate the refiner has purchased and banked the necessary amount of NO_X credits to equal the NO_X deficit calculated for that quarter.

Change in Alternative Averaging Period

At any point during the pendency of the alternative conventional gasoline anti-dumping compliance period, we are proposing that the Administrator may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. For example, if a refinery originally received an alternative compliance period with a duration of 2 years beginning on January 1, 2001, at any time prior to the end of that compliance period (January 1, 2003), the Administrator may approve an application to assign to the refinery the standards and requirements that would have been applicable to the refinery had the refinery originally received one of the other alternative compliance periods. Any refinery for which a change in the applicable alternative compliance period is approved would thereafter operate as if the refinery had originally requested and received such new alternative compliance period, and would be subject to the standards and other requirements applicable under such new alternative compliance period. Consequently, for a refinery with an original alternative compliance period of 2 years beginning on January 1, 2001 (which would end on January 1, 2003), for which the Administrator later approves a change to a 3 year compliance period on January 1, 2002, the termination date for the new alternative compliance period would be January 1, 2004, and the refinery would need to begin producing gasoline that complies with the annual average statutory baseline during the quarter beginning January 2004.

We are proposing that the Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject. No such application may result in an alternative compliance period that extends beyond January 1, 2006. A refinery for which the Administrator approves a change in the alternative compliance period would be subject to all the standards and other requirements of the new alternative compliance period as well as any additional conditions or requirements that are included in the approval of the application for a changed alternative compliance period. Accept as specifically modified by this section, such refinery would have to continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards.

IV. Administrative Requirements

A. Executive Order 12866

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

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

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

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

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

The Agency has determined that this proposed regulation would result in none of the economic effects set forth in Section 1 of the Order because it would generally relax the requirements of the anti-dumping program and provides regulated parties with more flexibility with respect to compliance with the anti-dumping requirements. Pursuant to the terms of Executive Order 12866, OMB has notified us that it does not consider this a ''significant regulatory action'' within the meaning of the Executive Order and has waived review.

B. 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. This proposed rule 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. This proposed rule would permit refiners to petition for alternative anti-dumping compliance periods and would not impose any substantial direct effects on the states. Thus, Executive Order 13132 does not apply to this proposed rule.

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

Under Executive Order 13084, we may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, or that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires us to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule would not create a mandate for any tribal governments. This proposed rule would apply to gasoline refiners. Today's proposed action would make some changes that would generally provide flexibility within the Federal anti-dumping requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Regulatory Flexibility Act (RFA), As Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule would 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.

After considering the economic impacts of today's proposed rule on small entities, the Administrator has determined that this proposed action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's proposed rule would provide regulatory relief by permitting regulated parties, including small entities, to seek an extended anti-dumping compliance period. We have therefore concluded that today's proposed rule would relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

This proposed action establishes a petition process that involves the collection of information. It also requires reports that will utilize existing RFG and anti-dumping reporting forms. Refiners that request alternative compliance periods for anti-dumping are already subject to anti-dumping reporting requirements, which include annual compliance reporting, but although refiners of RFG are required to submit quarterly batch reports and laboratory reports, refiners of conventional gasoline under the anti-dumping program are not generally subject to this quarterly reporting requirement. A refiner granted an alternative compliance period for anti-dumping under this rule would become subject to quarterly batch reporting and laboratory reports. Since this constitutes the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the existing Information Collection Request (ICR) for the RFG and anti-dumping program will be submitted to OMB for approval to the collection of any information. A separate Federal Register notice will be published regarding the ICR. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.07).

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 our regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, we 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 a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, an agency 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

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

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that we have 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.

We interpret 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. This proposed rule permits flexibility in establishing extended anti-dumping compliance periods in narrow circumstances where a net environmental benefit is expected.

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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our 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 us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's proposed action would not establish new technical standards or analytical test methods, and would not affect existing technical standards or analytical test methods.

J. Statutory Authority

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

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Anti-dumping, Reformulated gasoline.

Dated: August 30, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–22809 Filed 9–7–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Parts 23 and 26

[Docket OST–97–2550]

RIN 2105–AB92

Participation by Disadvantaged Business Enterprises in Department of Transportation Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM).

SUMMARY: In May 1997, the Department issued a supplemental notice of proposed rulemaking (SNPRM) to revise its disadvantaged business enterprise (DBE) regulation. The SNPRM included proposals for revising the airport concessions portion of the DBE program. When the Department, in February 1999, issued the final rule based on the SNPRM, we did not publish a final version of the airport concessions proposal.

This SNPRM seeks comments on an airport concessions subpart to part 26 that takes into account comments on the May 1997 SNPRM, adapts provisions of the rest of part 26 to the concessions context, and proposes options for provisions affecting car rental operations at airports. These options are based in part on a recent memorandum of understanding between the American Car Rental Association and the Airport Minority Advisory Council making recommendations to the Department on this aspect of the rulemaking.

DATES: Comments should be received by October 23, 2000. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Attn: Docket No. OST–97–2550, Department of Transportation, 400 7th Street, SW., Room PL401, Washington DC, 20590. For the convenience of persons wishing to review the docket, it is requested that comments be sent in triplicate. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. Comments may be reviewed at the above address from 9 a.m. through 5:30 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following web address: *http://dms.dot.gov/submit/.* The public may also review docketed comments electronically. The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/.*

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC 20590, phone numbers (202) 366–9310 (voice), (202) 366–9313 (fax), (202) 755–7687 (TDD), bob.ashby@ost.dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: The airport concessions provision of the DBE regulation implements statutory authority that is separate from the authority for the DBE program for DOT-assisted contracting. It applies to an industry—airport concessions—that