Distribution, or Use'(66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

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 action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

V. Statutory Provisions and Legal Authority

The statutory authority for the fuels controls in today's proposed rule can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Support for any procedural and enforcement-related aspects of the fuel controls in today's proposed rule, including recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Confidential business information, Environmental protection, Gasoline, Labeling, Motor vehicle fuel, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: December 22, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is proposed to be amended as set forth below:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

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

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.855 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?

* * * * *

(b)(1) * * *

(i) For conventional gasoline, prior to January 1, 2005, 94.64 mg/mile; starting January 1, 2005, 97.38 mg/mile.

(ii) For reformulated gasoline, prior to January 1, 2005, 25.31 percent reduction from statutory baseline; starting January 1, 2005, 26.78 percent reduction from statutory baseline.

* * * * *

[FR Doc. 05–42 Filed 1–3–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[OAR–2003–0010; FRL–7857–1]

RIN 2060–AK02

Regulation of Fuels and Fuel Additives: Modification of Anti-Dumping Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and U.S. Territories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Today's action proposes to allow refiners and importers who produce or import conventional gasoline for use in Alaska, Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands to change the way that they calculate emissions from such gasoline for purposes of calculating their conventional gasoline anti-dumping baselines and evaluating annual average emissions. Specifically, for gasoline sold in these areas, refiners and importers could elect to modify their baselines to replace the anti-dumping statutory baseline with the single seasonal statutory baseline that is most appropriate to the regional climate, and to use the seasonal component of the Complex Model that is most appropriate to the regional climate to calculate individual baselines and annual average emissions. This action would allow refiners and importers to petition EPA to use the summer statutory baseline and the summer Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands and would allow refiners and importers to petition EPA to use the winter statutory baseline and the winter Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline produced or imported for use in Alaska. We are proposing these actions to address certain inconsistencies in the RFG program's anti-dumping provisions which may have significant unintended negative impacts on refiners and importers who produce or import gasoline for these areas. Today's action would also extend similar seasonal baseline and compliance modifications to the provisions applicable to conventional gasoline under Gasoline Toxics, also known as the Mobile Source Air Toxics rule, or MSAT.

DATES: Comments must be received on or before February 3, 2005.

ADDRESSES: Submit your comments, identified by Docket ID No. OAR–2003–0010 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: *http://www.epa.gov/edocket,* Attention Docket ID No. OAR–2003–0010.

4. Mail: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

5. Hand Delivery: EPA Docket Center, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. OAR–2003–0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information

(CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The 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 Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Marilyn Bennett, Transportation and Regional Programs Division, Office of Transportation and Air Quality (6406J), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 343–9624; fax number: (202) 343–2803; e-mail address: *mbennett@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

Entities potentially affected by this action include those involved with the production and importation of conventional gasoline motor fuel. Regulated categories and entities affected by this action include:

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated parties
Industry	324110	2911	Petroleum Refiners, Importers.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) 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 the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your entity is regulated by this action, you should carefully examine the applicability criteria of Part 80, subparts D, E and F of title 40 of the Code of Federal Regulations. If you have any question regarding applicability of this action to a particular entity, consult the person in the preceding **FOR FURTHER INFORMATION CONTACT** section above.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI). In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

2. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

4. Describe any assumptions and provide any technical information and/or data that you used.

5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

6. Provide specific examples to illustrate your concerns, and suggest alternatives.

7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

8. Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

D. Outline of This Preamble

II. Background

A. The Anti-Dumping Requirements

Section 211(k) of the Clean Air Act (''CAA'' or ''Act'') requires EPA to establish standards for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas. The Act also requires non-reformulated, or conventional, gasoline used in the rest of the country to be as clean as the gasoline produced or imported in 1990.

CAA Section 211(k)(8). The requirements for conventional gasoline are called the anti-dumping requirements. The anti-dumping requirements prevent refiners from dumping into conventional gasoline the dirty gasoline components that are removed when RFG is produced. To be in compliance with the anti-dumping requirements, the exhaust toxics and nitrogen oxides (NO_X) emissions performance of a refinery's or importer's conventional gasoline must be no dirtier than the refinery's or importer's 1990 exhaust toxics and NO_X emissions performance, on an annual average basis.

EPA requires refiners to calculate the exhaust toxics and NO_X emissions performance of gasoline using the Complex Model. The Complex Model is a predictive model used to determine emissions based on several fuel parameters, such as sulfur, benzene and Reid vapor pressure (RVP). *See* 40 CFR 80.45. The Complex Model has both a summer version and a winter version.[1] The summer Complex Model is based on data reflecting the performance of gasoline sold in the summer; *i.e.*, gasoline with lower RVP to comply with volatility requirements at 40 CFR 80.27 and which is typical of summer climatic conditions. The winter Complex Model is a modified version of the summer model which sets the RVP at 8.7 psi and adjusts for winter climate conditions. Both models are based on MOBILE model outputs.[2] MOBILE model outputs for the summer model assume ambient temperatures of 69 deg. F to 94 deg. F. MOBILE model outputs for the winter model assume ambient temperatures of 39 deg. F to 57 deg. F. MOBILE model outputs show significantly greater ''winter'' emissions due to longer engine and catalyst warm-up times. As a result, for identical fuel compositions (based on those fuel parameters evaluated in the Complex Model), the winter Complex Model results in significantly higher emissions of exhaust toxics and NO_X than the summer Complex Model, on a mg/mile basis.

B. Compliance With the Anti-Dumping Requirements

The anti-dumping regulations require refineries and importers of conventional gasoline to comply with an established baseline for exhaust toxics and NO_X. The baseline will be either an ''individual baseline'' or the ''anti-dumping statutory baseline.'' An individual baseline is based on the average performance of the gasoline that the individual refinery or importer produced or imported during the calendar year 1990. The anti-dumping statutory baseline is based on the average quality of gasoline sold throughout the United States during 1990. The anti-dumping statutory baseline applies to refineries and importers that are unable to calculate an individual baseline based on 1990 gasoline performance. If a refinery or importer has an individual baseline, gasoline production during a given annual averaging period, up to the refinery's or importer's 1990 production or import volume, must be no ''dirtier'' than the refinery's or importer's individual 1990 baseline for exhaust toxics and NO_X. Gasoline produced or imported during the annual averaging period in excess of the refinery's or importer's 1990 gasoline production or import volume must be no dirtier than the anti-dumping statutory baseline for exhaust toxics and NO_X. For refineries and importers that are subject to the anti-dumping statutory baseline, all gasoline produced or imported during the annual averaging period must meet the anti-dumping statutory baseline for exhaust toxics and NO_X.

Requiring compliance with the anti-dumping statutory baseline for gasoline production in excess of the refinery's or importer's 1990 gasoline production volume is intended to prevent the overall degradation of the conventional gasoline pool as a result of increased production by refineries with individual baselines that are dirtier than the 1990 national average, and/or decreased production by refineries with individual baselines that are cleaner than the 1990 national average. *See* 57 FR 13487–88 (April 16, 1992). Requiring compliance with the anti-dumping statutory baseline for gasoline produced by refineries and importers who are unable to establish an individual baseline is intended to ensure that such gasoline will not degrade the conventional gasoline pool compared to the 1990 average.

To comply with the anti-dumping requirements, each refinery and importer must evaluate the overall quality of the conventional gasoline that it produces or imports during each annual averaging period. The refinery or importer must then compare the quality of its conventional gasoline to the refinery's or importer's baseline (individual 1990 baseline or anti-dumping statutory baseline, as appropriate). So long as the conventional gasoline produced or imported has overall emissions, as calculated by the Complex Model, that are no worse than the performance reflected in the refinery's or importer's baseline, the refinery or importer is in compliance with EPA's anti-dumping requirements.

The anti-dumping statutory baseline includes both summertime and wintertime seasonal components. The Act provides the specifications for the summertime component of the statutory baseline gasoline, and indicates that such specifications apply to ''gasoline sold during the high ozone period (as determined by the Administrator).''[3] CAA Section 211(k)(10)(B)(i). EPA determined wintertime baseline gasoline specifications based on an estimate of the average quality of wintertime gasoline in 1990, as required under the Act. CAA Section 211(k)(10)(B)(ii). The wintertime baseline gasoline specifications were derived from survey data collected in representative cities in the continental U.S.[4] Baseline summertime and wintertime gasolines have different average fuel parameter values because of the different weather conditions in summer and winter and the effect of the volatility controls on summertime gasoline. The anti-dumping statutory baseline, which approximates the average emissions of gasoline sold in the U.S. in 1990, is the volume-weighted average of the summertime and wintertime baseline gasoline emissions, as calculated using the appropriate seasonal version of the Complex Model. *See* 59 FR 7793 (February 16, 1994).

[1] A detailed discussion of the development of the summer and winter versions of the Complex Model is included in the Final Regulatory Impact Analysis for Reformulated Gasoline (December 13, 1993). Public Docket No. A–92–12.

[2] For a discussion of the MOBILE Model, see the Regulatory Impact Analysis for the final RFG rule, December 13, 1993.

[3] EPA's volatility regulations at 40 CFR 80.27 define ''high ozone season'' as ''the period from June 1 to September 15 of any calendar year.'' In the preamble to the RFG final rule, EPA also defined ''high ozone season'' as June 1 through September 15 for purposes of compliance with the RFG and anti-dumping requirements. EPA chose this period because it covers the vast majority of days during which the national ambient air quality standard for ozone is exceeded nationwide and is consistent with the period covered by EPA's gasoline volatility control requirements. *See* 59 FR 7722 (February 16, 1994). The Act specifies that the volatility controls apply only to the 48 contiguous states and the District of Columbia. CAA Section 211(h)(5).

[4] Winter statutory gasoline parameter values were derived by combining data from survey samples collected in 23 continental U.S. cities by the Southwest Research Institute (SWRI) and in 53 continental U.S. cities by the Motor Vehicle Manufacturer's Association (MVMA). Winter baseline emissions were determined on a nationwide basis based on this survey data. For further discussion of the methodology used in determining the winter statutory baseline, *see* 56 FR 31179 (July 9, 1991).

C. Calculating Individual Baselines and Annual Average Emissions

A refinery's or importer's individual 1990 baseline is calculated using the summer version of the Complex Model to assess the performance of the refinery's or importer's 1990 summer gasoline and the winter version of the Complex Model to assess the performance of the refinery's or importer's 1990 winter gasoline. For purposes of these calculations, the regulations consider summer gasoline to be gasoline that is subject to EPA's volatility requirements, and winter gasoline to be gasoline that is not subject to EPA's volatility requirements. 40 CFR 80.91(e)(2)(ii)(A). Gasoline sold in the territories of Puerto Rico and the Virgin Islands, and in Alaska and Hawaii, is not subject to the volatility requirements.[5] *See* CAA Section 211(h)(5). Thus, for purposes of calculating a refinery's or importer's individual 1990 baseline emissions, none of the gasoline produced or imported for use in these areas is considered summer gasoline under the current regulations. As a result, all of the gasoline produced or imported for use in these areas was evaluated using the winter Complex Model for purposes of calculating individual 1990 baseline emissions.[6]

Similarly, to determine annual average emissions for compliance purposes, each year refineries and importers calculate emissions from their summer gasoline using the summer Complex Model and emissions from their winter gasoline using the winter Complex Model. For purposes of calculating annual average emissions, the regulations specify that summer gasoline is gasoline that meets the volatility requirements and winter gasoline is gasoline that does not meet the volatility requirements. 40 CFR 80.101(g)(5) and (g)(6). Because gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands is not subject to the volatility requirements, refineries and importers currently are required to evaluate all of their gasoline produced or imported for use in these areas during the annual averaging period using the winter Complex Model.

As discussed above, refiners and importers must provide gasoline that complies with their individual anti-dumping baseline up to their 1990 baseline volume, after which any excess volumes must comply with the anti-dumping statutory baseline.[7] Refiners and importers without an individual baseline must comply with the anti-dumping statutory baseline for all of the conventional gasoline they produce or import during each annual averaging period.[8] This general approach to compliance applies to both refiners and importers of gasoline sold in the continental U.S. and refiners and importers of gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands.

III. Anti-Dumping Compliance for Gasoline Produced or Imported for Use in Alaska, Hawaii, Puerto Rico and the Virgin Islands

A. Need for Action

As discussed above, under the anti-dumping regulations, gasoline produced or imported in excess of a refinery's or importer's 1990 baseline volume during the annual averaging period must comply with the anti-dumping statutory baseline. All gasoline produced or imported during each annual averaging period by refineries and importers who are unable to establish an individual baseline also must comply with the anti-dumping statutory baseline. In most circumstances, use of the anti-dumping statutory baseline is an appropriate and necessary tool to ensure that conventional gasoline quality does not degrade in comparison to the average quality of gasoline sold in 1990. However, the current use of the anti-dumping statutory baseline may result in unintended and unnecessary adverse impacts on refiners and importers who produce or import gasoline for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands that is subject to the anti-dumping statutory baseline. For such gasoline, the current anti-dumping requirements may result in an inconsistent application of EPA's seasonal Complex Models.

As discussed above, the anti-dumping statutory baseline is an estimate of the average quality of 1990 gasoline. This estimate was calculated using the summer Complex Model to evaluate gasoline sold during the volatility control period and the winter Complex Model for all other gasoline. For compliance purposes, conventional gasoline sold in the continental United States is evaluated using the summer Complex Model if it is gasoline that meets the summer volatility requirements, and the winter Complex Model if it is gasoline that does not meet the summer volatility requirements. Thus, for conventional gasoline sold in the continental U.S. that is required to comply with the anti-dumping statutory baseline, we expect there to be general agreement between the seasonal models used to develop the baseline and the seasonal models used to evaluate annual compliance. Accordingly, application of the anti-dumping statutory baseline for such gasoline provides reasonable assurance that the quality of the conventional gasoline will not degrade relative to the average quality of gasoline in 1990.

Gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands in excess of the refinery's or importer's 1990 baseline volume of gasoline produced or imported for use in these areas, and all gasoline produced or imported for use in these areas by a refiner or importer who does not have an individual baseline, also must comply with the anti-dumping statutory baseline. As discussed above, the anti-dumping statutory baseline was developed using both the summer and winter seasonal models. Since the annual emissions performance of gasoline produced or imported for use in these areas must be evaluated using only the winter Complex Model, for these areas, there is not an agreement between the seasonal model reflected in the baseline and the seasonal model used for calculating

[5] The U.S. territories of Guam, the Commonwealth of the Northern Mariana Islands and American Samoa also are not subject to the volatility requirements pursuant to CAA section 211(h)(5); however, these territories have received exemptions from the anti-dumping requirements, and, as a result, are not affected by today's rule. *See* 61 FR 53854 (October 16, 1996)(Guam); 62 FR 63853 (December 3, 1997)(Northern Mariana Islands); 65 FR 71067 (November 29, 2000)(American Samoa).

[6] Pursuant to a rulemaking on June 9, 1999 (64 FR 30904), refiners and importers who have Puerto Rico gasoline, or Puerto Rico and Virgin Islands gasoline, in their individual baseline and that sell a volume of Puerto Rican gasoline greater than their 1990 baseline volume of Puerto Rican gasoline, are allowed to petition EPA to replace the winter Complex Model with the summer Complex Model for anti-dumping baseline and compliance calculations. *See* 40 CFR 80.93(d) and 80.101(f)(4)(iii) and (g)(1)(ii)(B).

[7] For refineries and importers with individual 1990 baselines who produce gasoline volumes in excess of their 1990 volume during an averaging period, the regulations require the use of a specified ''compliance baseline'' equation. 40 CFR 80.101(f). In general, this equation adjusts the refinery's or importer's individual baseline to reflect the parameter values of the statutory baseline for that volume of the refinery's or importer's total annual gasoline production which is in excess of the refinery's or importer's 1990 baseline volume. This adjusted compliance baseline then is the refinery's or importer's anti-dumping standard for that annual averaging period, and the annual average emissions from all conventional gasoline produced by that refinery or importer during the annual averaging period must meet that standard.

[8] Since most importers are unable to establish an individual 1990 baseline, importers generally are required to comply with the anti-dumping statutory baseline.

annual compliance.[9] Because the winter Complex Model predicts higher emissions than the summer Complex Model, in these situations, the refinery or importer is required to comply with a standard that, in effect, is more stringent than intended. That is, the refiner or importer must produce or import gasoline that is actually cleaner than the average gasoline produced or imported for use in 1990.[10] This unintended result can have a significant adverse economic effect on those refineries and importers whose baselines include gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands and who have increased the volume of gasoline that they produce or import for these areas above their 1990 baseline volumes of gasoline produced or imported for these areas, and those refineries and importers who are subject to the anti-dumping statutory baseline for all of their gasoline.

B. Proposed Action

1. What Change to the Baselines Is EPA Proposing?

We believe that the performance of the gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands should be compared to a baseline that is seasonally consistent with the compliance model that is used for purposes of compliance evaluation. To address this, we considered allowing refiners and importers in these areas to use the winter Complex Model for all baseline and compliance calculations, and to replace the anti-dumping statutory baseline with only the winter statutory baseline for compliance purposes. However, since the seasonal Complex Models were developed taking climatic conditions into account, we believe that selection of the seasonal model should generally reflect the climate of the region. As a result, we are proposing the following changes for refiners and importers who produce or import conventional gasoline for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands.

First, we are proposing to allow refineries and importers to petition EPA to modify their baselines so that all gasoline produced or imported for use in these areas that is currently subject to the anti-dumping statutory baseline will be subject to a single seasonal statutory baseline. Thus, those volumes of gasoline produced or imported for use in these areas in excess of the refinery's or importer's 1990 individual baseline volume of gasoline produced or imported for use in these areas, and those volumes of gasoline produced or imported by a refinery or importer without an individual baseline, would no longer be subject to both seasonal components of the anti-dumping statutory baseline. Instead, such gasoline would be subject to the appropriate single seasonal component of the anti-dumping statutory baseline. This approach would alleviate the current inconsistency (as described above) by more accurately approximating the performance of average 1990 gasoline. This approach would allow refineries and importers to calculate their baseline emissions for gasoline produced or imported for use in these areas using a seasonal version of the Complex Model that agrees with the seasonal version of the Complex Model that they must use to calculate annual emissions performance.

Second, we are proposing that any refinery or importer that elects to change its baseline must use the single seasonal statutory baseline that is most appropriate to the regional climate, and the seasonal component of the Complex Model that is most appropriate to the regional climate, for calculating both individual baseline emissions and annual average emissions. Thus, for the reasons discussed below, refineries and importers of gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands that elect to change their baselines in accordance with today's proposal would need to use the summer statutory baseline and the summer Complex Model for all calculations. Refineries and importers of gasoline produced or imported for use in Alaska that elect to change their baselines in accordance with today's proposal would need to use the winter statutory baseline and the winter Complex Model for all calculations.

We believe that it is generally appropriate to treat Alaska, Hawaii, Puerto Rico and the Virgin Islands essentially as isolated subcomponents of the overall U.S. gasoline pool.[11] Unlike areas within the continental U.S., these areas are geographically isolated, and, therefore, do not typically receive gasoline from the fungible system that supplies most of the U.S. These areas also have potentially unique automobile fleets and ambient airshed characteristics. Most importantly, these areas are climatically isolated from the continental U.S. and have relative constant and uniform temperatures.[12]

The relatively constant warm year-round ambient temperatures in Hawaii, Puerto Rico and the Virgin Islands are generally consistent with conditions typical of a high ozone season and with the conditions under which EPA intended the summer Complex Model to apply. Thus, for purposes of anti-dumping compliance, we believe that the high ozone season essentially applies in these areas year round. Therefore, today's proposal would allow refineries and importers to petition EPA to modify their individual 1990 baselines for gasoline produced or imported for use in these areas using only the summer Complex Model. We would then require gasoline produced or imported for use in these areas to comply with this new individual baseline for gasoline up to the refinery's or importer's 1990 baseline volume of gasoline to these areas. Gasoline production or imports in excess of the refinery's or importer's 1990 baseline

[9] Gasoline produced or imported for Hawaii, Alaska, Puerto Rico and the Virgin Islands was evaluated using only the winter Complex Model for purposes of calculating a refinery's or importer's individual 1990 baseline. Since annual production or imports for these areas is also evaluated using the winter Complex Model, there is a general agreement between the seasonal model used to develop the baseline and the seasonal model used to calculate annual emissions for gasoline production or imports up to the refinery's or importer's 1990 baseline volume of gasoline produced or imported for these areas.

[10] Because the winter Complex Model predicts higher emissions for exhaust toxics and NO_X than the summer Complex Model, the average emissions of gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands during an annual averaging period, which is evaluated using only the winter Complex Model, will appear to have higher emissions than that same gasoline would appear to have if evaluated using the summer Complex Model for some of the volume of gasoline. If, for example, gasoline produced or imported for use in these areas has properties identical to the properties of anti-dumping baseline gasoline, that gasoline (as evaluated using only the winter Complex Model) will appear to have higher emissions than anti-dumping baseline gasoline, and would be deemed out of compliance with the anti-dumping statutory baseline emissions standard.

[11] Certain provisions of the Clean Air Act also treat Alaska, Hawaii, Puerto Rico, the Virgin Islands and the other U.S. territories differently than areas within the continental U.S. Recognizing that these areas may have unique local factors that render compliance with fuels requirements infeasible or unreasonable, the Act specifically provides that these areas may petition EPA for an exemption from the fuels requirements. *See* CAA Section 325. The Act extends this provision to Alaska and Hawaii for purposes of compliance with the diesel sulfur requirements. *See* CAA Section 211(i)(4). In addition, as discussed above, the Act exempts Alaska, Hawaii and the U.S. Territories from the volatility requirements for conventional gasoline. *See* CAA Section 211(h)(5). Thus, we believe that today's proposal is consistent with the Act's recognition that, because of their unique geographical and climatic circumstances, it may be appropriate under certain circumstances to treat these areas in a different manner than areas within the continental U.S.

[12] Similar distinctions within the continental U.S. would be difficult to make because of the fungibility of the gasoline distribution system, the interconnectedness of regional airsheds, the mobility of the automobile fleet, and the lack of distinctly isolated climatic regions.

volume of gasoline to these areas would be subject to only the summer statutory baseline. The proposal would allow refineries and importers that are currently subject to the anti-dumping statutory baseline to petition EPA to change their baseline to only the summer statutory baseline for gasoline produced or imported for these areas. Refineries and importers would use only the summer Complex Model for all compliance calculations for all gasoline produced or imported for use in these areas. In the case of refineries and importers with an individual 1990 baseline which does not include any gasoline produced or imported for use in these areas, any gasoline produced or imported for use in these areas during the annual averaging period would be subject to the refinery's or importer's individual summer 1990 baseline, and the summer Complex Model would be used for all compliance calculations.

We also believe that the relatively constant colder year-round ambient temperatures in Alaska are generally consistent with the conditions outside of the high ozone season and with the conditions under which EPA intended the winter Complex Model to apply. Thus, today's proposal would allow refineries and importers to petition EPA to establish an individual 1990 baseline for gasoline produced or imported for use in Alaska using only the winter Complex Model. We then would require gasoline produced or imported for use in Alaska to comply with this new individual baseline up to the refinery's or importer's 1990 baseline volume of Alaska gasoline. Gasoline produced or imported for use in Alaska in excess of the refinery's or importer's 1990 baseline volume of Alaska gasoline would be subject to only the winter statutory baseline. The proposal would allow refineries and importers currently required to comply with the anti-dumping statutory baseline to petition EPA to change their baseline to only the winter statutory baseline for Alaska gasoline. Refineries and importers would continue to use the winter Complex Model for all compliance calculations for Alaska gasoline. In the case of refineries and importers with an individual 1990 baseline that does not include any gasoline produced or imported for use in Alaska, any gasoline produced or imported for use in Alaska during the annual averaging period would be subject to the refinery's or importer's individual winter 1990 baseline, and the winter Complex Model would be used for all compliance calculations.

We considered, as an alternative approach, continuing the application of the anti-dumping statutory baseline in these areas and requiring annual production or imports in these areas to be evaluated using both seasonal components of the Complex Model rather than a single seasonal Complex Model. However, we believe it is more appropriate to use a single seasonal statutory baseline and a single seasonal version of the Complex Model to evaluate compliance in these areas. Requiring application of the anti-dumping statutory baseline, with its two seasonal components, and use of both seasonal components of the Complex Model for calculating annual averages, is appropriate for gasoline produced or imported for use in the continental U.S., where most areas experience seasonal changes in temperature that generally correspond to the high ozone/non-high ozone periods. However, given that the temperatures in Alaska, Hawaii, Puerto Rico and the Virgin Islands are relatively constant year round, we believe that the single seasonal statutory baseline and single seasonal version of the Complex Model most appropriate to the climatic conditions of the area would provide a more accurate evaluation of gasoline produced or imported for use in these areas. Therefore, we believe that today's proposed action would provide a more appropriate mechanism for ensuring that gasoline in these areas does not degrade in comparison to gasoline sold in these areas in 1990.

We request comment on this proposed action and on other possible approaches to address the inconsistencies in the anti-dumping regulations discussed above regarding the application of the anti-dumping statutory baseline and the seasonal Complex Models for gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands.

2. What Change Does EPA Propose To Make to the Anti-Dumping Regulations To Implement the Proposal?

To implement the changes described above, today's rule proposes to revise the anti-dumping regulations to allow any refinery or importer with an individual 1990 baseline that produces or imports gasoline for use in Hawaii, Puerto Rico and the Virgin Islands the option to petition EPA to use the summer seasonal model for all baseline and compliance calculations for gasoline produced or imported for these areas.[13] As discussed above, given the consistently warm climate in Hawaii, Puerto Rico and the Virgin Islands, we believe that the summer Complex Model is the most appropriate model for evaluating emissions in these areas under the anti-dumping program. Thus, we are proposing to modify the baseline submission provisions at § 80.93(d) to allow refineries and importers to petition EPA to evaluate all of their 1990 conventional gasoline produced or imported for use in these areas using the summer Complex Model. This would require a refinery or importer to calculate a separate 1990 individual baseline for gasoline produced or imported for use in these areas, and to recalculate its current anti-dumping baseline to reflect the subtraction of baseline gasoline produced or imported for use in these areas.[14]

Today's action also would revise the anti-dumping compliance baseline equation at § 80.101(f)(4) by replacing the anti-dumping statutory baseline component with the summer statutory baseline component for gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands in excess of the refinery's or importer's 1990 baseline volume of gasoline produced or imported for these areas. The proposed modification of the baseline submission provisions at § 80.93(d) also would allow refineries and importers currently subject to the anti-dumping statutory baseline for all of their gasoline to petition EPA to change their baseline to only the summer statutory baseline for any conventional gasoline produced or imported for use in these areas. The proposal includes a new § 80.101(f)(3) which would require such refineries

[13] As discussed in footnote 6 above, in a final rule dated June 9, 1999 (64 FR 30904), EPA modified the anti-dumping regulations to allow refiners and importers who have Puerto Rico gasoline, or Puerto Rico and Virgin Islands gasoline, in their 1990 baseline to petition EPA to replace the winter Complex Model with the summer Complex Model for purposes of compliance for their Puerto Rico gasoline. Today's rule does not substantively change the provisions for Puerto Rico gasoline promulgated on June 9, 1999. Rather, today's rule extends the use of the summer only Complex Model to gasoline produced or imported for use in Puerto Rico by refiners and importers that do not have individual baselines and those that have an individual baseline but do not have any Puerto Rico gasoline in their baselines.

[14] For refineries and importers with individual baselines that produce or import gasoline for the continental U.S. as well as Alaska, Hawaii, Puerto Rico or the Virgin Islands, the approach in today's proposal likely would result in a reduction of the total volume of gasoline that currently would be subject to the anti-dumping statutory baseline, since, under the proposal, gasoline produced or imported for Alaska, Hawaii, Puerto Rico or the Virgin Islands in excess of the refinery's or importer's baseline volume of gasoline for these areas would no longer be included in the volume of gasoline subject to the anti-dumping statutory baseline. This may have an impact on the refinery's or importer's compliance baseline for the annual averaging period.

and importers to comply with the summer statutory baseline for gasoline produced or imported for use in these areas. In addition, the proposal would modify 40 CFR 80.101(g)(1) to require refineries and importers that petition EPA under § 80.93(d) to evaluate all of their gasoline produced or imported for these areas during the annual averaging period using only the summer Complex Model.

As discussed above, given Alaska's consistently colder climate, we believe that the winter Complex Model is the most appropriate model for evaluating emissions of conventional gasoline produced or imported for use in Alaska under the anti-dumping program. Today's proposal, therefore, does not change the current requirement for Alaska 1990 baseline gasoline and annual average emissions to be evaluated using the winter Complex Model. However, the modifications to the baseline submission provisions at § 80.93(d) would require refineries and importers of Alaska gasoline that elect to change their baseline to calculate a separate baseline for Alaska gasoline, and to recalculate their current anti-dumping baseline to reflect the subtraction of 1990 baseline Alaska gasoline. Today's action would revise the anti-dumping compliance baseline equation at § 80.101(f)(4) by replacing the anti-dumping statutory baseline component with the winter statutory baseline component for gasoline produced or imported in excess of the refinery's or importer's 1990 baseline volume of Alaska gasoline. The modifications to the baseline submission provisions at § 80.93(d) also would allow refineries and importers currently subject to the anti-dumping statutory baseline for all of their gasoline to petition EPA to change their baseline to the winter statutory baseline for any conventional gasoline produced or imported for use in Alaska. The new § 80.101(f)(3) would require such refineries and importers to comply with the winter statutory baseline for gasoline produced or imported for use in Alaska.

In addition to the proposed changes to the anti-dumping regulations discussed above, today's action proposes to modify §§ 80.91(e)(2)(ii)(A) and 80.101(g)(6) to clarify the summer/winter distinction with regard to gasoline produced or imported for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands. We request comment on all of the proposed modifications to the anti-dumping regulations.

3. How Does a Refiner or Importer Change Its Baseline?

We are proposing that the changes in today's rule would be optional for any refiner for a refinery, or importer, that produces or imports gasoline intended for use in Alaska, Hawaii, Puerto Rico and the Virgin Islands, and would be limited to those refiners and importers that petition the Agency for these changes. However, a refinery or importer that changes from the anti-dumping statutory baseline to a single seasonal statutory baseline must use the appropriate seasonal statutory baseline for all gasoline produced or imported for use in any of the areas subject to this rule, and must use the appropriate seasonal Complex Model for all future calculations. For example, an importer of Puerto Rican gasoline that petitions EPA to change from the anti-dumping statutory baseline to a single seasonal statutory baseline must change to the summer statutory baseline and must use the summer Complex Model for all future calculations for Puerto Rican gasoline and also for any gasoline the importer imports into Hawaii and/or the Virgin Islands. Refineries and importers whose 1990 individual baselines include gasoline produced or imported for these areas would be required to recalculate their individual baselines, as described above, and submit the new baselines with their petition. Once such a petition is submitted and granted, the new method for determining compliance with the anti-dumping requirements would apply from then on and the refinery or importer could not revert back to its original baseline. The new baseline would apply to the refinery regardless of ownership; *i.e.*, if a refinery obtains a new baseline under today's rule, the new baseline would apply to the refinery even if the refinery is subsequently sold to another refiner.

Refineries and importers that produce or import gasoline for these areas and do not petition EPA to change their baselines would continue to be subject to their current baselines and would continue to use the Complex Model that is required for calculating emissions under the current regulations.

We believe that it is appropriate to make this baseline change optional since, as discussed below, an election not to adopt a baseline change would not result in any adverse environmental impact. We request comment on the proposal to allow these changes to be optional.

4. What Are the Environmental Effects of This Proposed Action?

We believe that the proposal to allow refineries and importers to change their baselines would not undermine the environmental goals of the anti-dumping program (*i.e.*, to ensure that conventional gasoline will be no dirtier than 1990 gasoline). Although it is possible that the gasoline supplied by parties to the affected areas could have increases in emissions, these changes will not result in gasoline with emissions that are greater than conventional gasoline in these areas, or nationwide, compared to 1990 levels. Today's rule provides an alternative compliance method for refiners and importers who, under the current regulations, are required to produce or import gasoline that is actually cleaner than the average 1990 gasoline produced or imported for use in the affected areas or nationwide. As a result, even if all of these affected parties choose the new compliance method, the goals of the anti-dumping program would be met. To the extent that parties choose to retain their current compliance method, there would continue to be an added environmental benefit above and beyond that specifically required to meet the goals of the anti-dumping program.

We request comment on the environmental effects of today's proposed changes to the anti-dumping rules.

5. When Would the Baseline Changes Become Effective?

We are proposing that the baseline changes proposed in today's rule would become effective beginning with the annual averaging period in which a refiner's or importer's petition is granted.

6. Are Refiners and Importers Required To Provide Documentation That Gasoline Was Produced or Imported for Use in an Affected Area?

We are proposing to require refiners and importers who change their baseline in accordance with today's rule to retain documents which substantiate that gasoline complying with the new baseline, in fact, was produced or imported for use in the affected area. We believe that such information will be included in business documents associated with the sale and distribution of the gasoline. In the absence of such documentation, the refiner or importer would have no assurance that the product would be used in the affected area, and, thus, would have no basis for applying the new baseline. We request

comment on the proposed documentation retention requirement.

IV. Mobile Source Air Toxics Rule (MSAT)

A. Background

40 CFR part 80, subpart J, contains the provisions applicable to refiners and importers for determining their baselines and compliance values for the gasoline toxics program, also known as the Mobile Source Air Toxics (MSAT) program. As with the conventional gasoline anti-dumping requirements, the toxics performance provisions in the MSAT program apply on a refinery-by-refinery (and importer-by-importer) basis. For each refinery, a refiner must identify the appropriate toxics performance baseline for its conventional gasoline and its RFG. Similarly, each importer must identify an appropriate toxics performance baseline for the gasoline that it imports. Refiners and importer must then demonstrate compliance with each applicable baseline on an annual average basis using the Complex Model.

The MSAT provisions require that refiners and importers establish an individual toxics baseline, separately for RFG and conventional gasoline, based on the average toxics performance of their gasoline during the baseline period, 1998 through 2000. Refiners and importers are also required to establish a total baseline volume based on their volume of gasoline production during this baseline period. Alternatively, a refiner or importer may be subject to the default toxic baseline established by EPA if a refinery or importer did not have sufficient production or imports during the MSAT baseline period to calculate an average toxics performance for their baseline gasoline. Refineries or importers subject to the default baseline do not have an MSAT baseline volume.

MSAT compliance is determined on an annual average basis. The gasoline produced or imported during the averaging period can be no more polluting than the refiner's or importer's MSAT baseline level for that type of gasoline (RFG or conventional). For RFG, total toxics emissions are evaluated, and toxics performance is reported as a percent reduction from the statutory baseline. For conventional gasoline, only exhaust toxics emissions are evaluated, and toxics performance is reported in mg/mile. Any volume produced or imported in excess of a refiner's or importer's individual MSAT baseline volume can be no more polluting than the RFG toxics standard or the refiner's or importer's conventional gasoline anti-dumping toxics baseline level, as applicable.

B. Action

EPA believes that it is appropriate to modify the MSAT requirements in a manner that is consistent with the changes being proposed today for the conventional gasoline anti-dumping program. These changes to the MSAT program are necessary because, generally, the MSAT provisions applicable to conventional gasoline are of the same form as the anti-dumping provisions, and because such changes are needed to maintain agreement between methods used to establish baselines and those used to evaluate gasoline performance for purposes of compliance. Thus, EPA is proposing to require a refiner or importer that submits a petition under the anti-dumping program as described in today's action to also petition for a separate or modified MSAT baseline applicable to gasoline produced or imported into Alaska and/or Hawaii, Puerto Rico, and the Virgin Islands.

EPA is proposing the following MSAT baselines and compliance determinations for refiners and importers who submit petitions as discussed in today's proposal for gasoline produced or imported into Alaska and/or Hawaii and/or Puerto Rico and/or the Virgin Islands:

(1) Affected parties who did not produce or import any gasoline during the baseline period (1998–2000), may petition EPA to have the appropriate seasonal MSAT conventional gasoline default baseline for gasoline produced or imported for use in Alaska and/or Hawaii, Puerto Rico, and the Virgin Islands, and use the appropriate seasonal version of the Complex Model for evaluating gasoline produced or imported for these areas. Such parties would be subject to the annual MSAT conventional gasoline default baseline for all other gasoline produced or imported (*i.e.*, gasoline for use in the continental U.S.)

(2) Affected parties who produced gasoline during the baseline period, but who did not produce or import gasoline for Alaska and/or Hawaii, Puerto Rico, or the Virgin Islands during the baseline period, may petition EPA to have the appropriate individual refinery or importer conventional gasoline seasonal MSAT baseline for these areas, and evaluate any gasoline produced or imported for use in these areas using the appropriate seasonal Complex Model. Such gasoline shall not be considered in determining whether a refiner or importer has produced or imported any incremental gasoline volumes above the refiner's or importer's MSAT baseline volume.

(3) Affected parties who only produced or imported gasoline for Alaska and/or Hawaii, Puerto Rico, or the Virgin Islands during the baseline period may petition EPA for a revised MSAT baseline using the appropriate seasonal version of the Complex Model, and use the appropriate seasonal version of the Complex Model for all compliance determinations for such gasoline. Gasoline produced or imported for use in these areas up to the refiner's or importer's MSAT baseline volume would be subject to the refiner's or importer's seasonally appropriate MSAT baseline. Any incremental volumes above the baseline volume would be subject to the refiner's or importer's appropriate seasonal anti-dumping baseline. Any gasoline produced or imported for use in the continental U.S. would be subject to the annual MSAT conventional gasoline default baseline.

(4) Affected parties who produced or imported gasoline during the baseline period for use in the continental U.S. *and* for use in Alaska and/or Hawaii, Puerto Rico, or the Virgin Islands may petition EPA to have a separate, seasonally appropriate MSAT baseline and a separate MSAT baseline volume for gasoline produced or imported for use in Alaska and/or Hawaii, Puerto Rico, and the Virgin Islands. Such refiners or importers must then use the appropriate seasonal component of the Complex Model to evaluated gasoline sold in these areas. Additionally, such refiners must establish a separate annual baseline and baseline volume for all other gasoline, which must be evaluated using the annual Complex Model.

We believe that the changes to the MSAT regulations proposed in today's rule are consistent with the Agency's findings in the MSAT rulemaking, 66 FR 17233–34 (March 29, 2001) respecting air toxics under the Act. In that rule, EPA adopted standards under Section 202(l) of the Act, which requires EPA to establish regulations which reflect the greatest degree of reduction in emissions of air toxics achievable through the application of available technology. In the MSAT rule, EPA determined that the performance of gasoline during the 1998 through 2000 baseline period reflected the greatest degree of toxics reduction achievable in the near term. Thus, EPA promulgated regulations under Subpart J requiring refiners and importers to produce or import gasoline that is no dirtier than the gasoline they produced or imported during the baseline period, and requiring refiners and importers who

did not produce or import gasoline during the baseline period to produce or import gasoline no dirtier than the national annual average toxics emissions during the baseline period (*i.e.,* the MSAT default baseline). *See* 66 FR 17233.

Under the current regulations, refiners and importers who produce or import gasoline for use in Alaska, and/or Hawaii, Puerto Rico or the Virgin Islands who are subject to the MSAT default baseline are, in fact, required to produce or import gasoline that is cleaner than the national annual average during the MSAT baseline period. This is because the MSAT default baseline was determined using both seasonal components of the Complex Model, while parties in the affected areas are required to evaluate their gasoline using only the winter Complex Model (which, as discussed above, gives higher emission values for the same gasoline than if the gasoline were evaluated using both seasonal components of the model). Today's proposed rule corrects this inconsistency while continuing to require such parties to produce or import gasoline that is no more polluting than the average gasoline during the MSAT baseline period, as required under EPA's MSAT regulations. Similarly, parties with individual MSAT baselines will continue to meet the requirements under the Act and EPA's regulations for gasoline produced or imported up to their baseline volume, without being required to produce or import gasoline that is cleaner than their average gasoline during the MSAT baseline period.

For parties with an individual MSAT baseline who produce or import gasoline in excess of their MSAT baseline volume, the MSAT regulations require the excess volume to meet the refiner's or importer's standard under the anti-dumping rule (*i.e.,* excess volume may not be more polluting than the refiner's or importer's individual anti-dumping baseline level). Therefore, we believe it is appropriate for gasoline produced or imported in excess of the MSAT baseline volume to be subject to the anti-dumping baseline that is established for purposes of anti-dumping compliance, as discussed earlier in this notice.

For these reasons, we believe it is appropriate for EPA to permit refiners and importers to modify their MSAT baseline, as described above, consistent with the changes allowed under today's proposed rule for refiners' and importers' anti-dumping baselines, with respect to gasoline sold in Alaska and/or Hawaii, Puerto Rico or the Virgin Islands.

V. Public Participation

EPA desires full public participation in arriving at its final decisions and solicits comments on all aspects of this proposal. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed, by February 3, 2005, to the EPA Air Docket, Docket No. OAR–2003–0010. Any proprietary information being submitted for the Agency's consideration should be markedly distinguished from other submittal information and clearly labeled ''Confidential Business Information.'' Proprietary information should be sent directly to the contact person listed above, and not to the public docket, to ensure that it is not inadvertently placed in the docket. Information thus labeled and directed shall be covered by a claim of confidentiality and will be disclosed by EPA only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by EPA, it may be made available to the public without further notice to the commenter.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

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

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

(3) Materially alter the budgetary impact of 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.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1591.17. OMB has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (*see* 59 FR 7716 (February 16, 1994)) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.13). EPA ICR 1591.17 associated with this rule will be encompassed in the next renewal of ICR 1591.13.

This proposed rule addresses certain adverse impacts on refiners and importers of conventional gasoline under the current rule and provides refiners and importers parties with additional flexibility to comply with the regulations. The flexibility afforded under this rule is optional. Modest information collection requirements in the form of a one-time only petition to EPA and minimal recordkeeping requirements are required of those refiners who wish to avail themselves of the flexibility provided in this rule.

The estimated hour burden for this rule is 20 hours per petition. The estimated number of petitions is 10. The estimated cost burden for the petition is $60 per hour. The total estimated cost for each respondent is $1,200. The total estimated cost for all respondents is $12,000. We do not anticipate that any burdens will be associated with the additional recordkeeping requirements, since the information required to be retained normally is included on business documents retained by refiners and importers.

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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID number OAR–2003–0010. The public docket is available for viewing at the Air and Radiation Docket in the EPA Docket Center (EPA/DC), EPA West, Room B 102, 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 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 listing 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 OAR–2003–0010. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after January 4, 2005, a comment to OMB is best assured of having its full effect if OMB receives it by February 3, 2005. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

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.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule involves optional provisions intended to promote successful implementation of the requirements for conventional gasoline and to address existing adverse economic impacts of the current rule.

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. This proposed rule affects gasoline refiners and importers of conventional gasoline by proposing optional provisions for evaluating the emissions of conventional gasoline in certain situations. This proposed rule would have the effect of reducing the burden of the conventional gasoline regulations on these regulated parties. Therefore, the requirements of the Unfunded Mandates Act do not apply to this proposed action.

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 will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule proposes options for evaluating the emissions of conventional gasoline. The requirements of the rule would be enforced by the federal government at the national level. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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 will 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 rule applies to gasoline refiners and importers who supply conventional gasoline. Today's action proposes certain modifications to the federal requirements for conventional gasoline, and does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health and 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 rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Acts 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. This proposed rule would provide additional flexibility for refiners and importers of conventional gasoline which may allow these regulated parties to better respond to fluctuations in gasoline supply or demand in certain situations.

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 establish new analytical test methods under the RFG and conventional gasoline programs.

VII. Statutory Provisions and Legal Authority

The statutory authority for the actions proposed today comes from section 211(c) and (k) of the CAA (42 U.S.C. 7545(c) and (k)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impairs emission control equipment. Additional support for the procedural aspects of the fuels's controls in today's proposed rule, including the petition requirement, comes from sections 114(a) and 301(a) of the CAA. Today's action is a proposed rulemaking under section 307(d) of the CAA.

List of Subjects in 40 CFR Part 80

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

Dated: December 22, 2004.

Michael O. Leavitt,

Administrator.

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

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

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

Authority: 42 U.S.C. 7414, 7545, and 7601(a).

Subpart E—[Amended]

2. Section 80.91 is amended by revising paragraph (e)(2)(ii)(A) to read as follows:

§ 80.91 Individual baseline determination.

* * * * *

(e) * * *

(2) * * *

(ii) * * *

(A)(*1*) All gasoline produced to meet EPA's 1990 summertime volatility requirements shall be considered summer gasoline. All other gasoline shall be considered winter gasoline, except:

(*2*) Gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands that is subject to an approved petition under § 80.93(d) shall be considered summer gasoline for purposes of paragraph (e) of this section.

* * * * *

3. Section 80.93 is amended by revising paragraph (d) to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(d) *Requirements for a petition applicable to gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.* (1)(i) Any refiner for any refinery or importer with gasoline produced or imported for use in Alaska in its individual 1990 baseline may petition EPA to establish a separate 1990 baseline for gasoline produced or imported for use in Alaska using the winter Complex Model, and to use the winter statutory baseline values under § 80.91(c)(5) for any gasoline produced or imported for use in Alaska which is

in excess of the refinery's or importer's 1990 volume of gasoline produced or imported for use in Alaska for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(4).

(ii) Any refiner for any refinery or importer with an individual 1990 baseline which did not include any gasoline produced or imported for use in Alaska in 1990 may petition EPA to establish a baseline for gasoline produced or imported for use in Alaska, which is the refinery's or importer's winter baseline values, for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(3) for any gasoline which the refiner or importer produces or imports for use in Alaska.

(iii) Any refiner or importer subject to the anti-dumping statutory baseline under § 80.91(c)(5) may petition EPA to have the winter statutory baseline values under § 80.91(c)(5) apply for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(3) for any gasoline which the refiner or importer produces or imports for use in Alaska.

(2)(i) Any refiner for any refinery or importer with gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands in its individual 1990 baseline may petition EPA to establish a separate 1990 baseline for gasoline produced or imported for use in these areas using the summer Complex Model, and to use the summer statutory baseline values under § 80.91(c)(5) for any gasoline produced or imported for use in these areas in excess of the refinery's or importer's 1990 volume of gasoline produced or imported for use in these areas, for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(4).

(ii) Any refiner for any refinery or importer with an individual 1990 baseline which did not include any gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands in 1990 may petition EPA to establish a baseline for gasoline produced or imported for use in these areas, which is the refinery's or importer's summer baseline values, for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(3) for any gasoline which the refiner or importer produces or imports for use in these areas.

(iii) Any refiner or importer subject to the anti-dumping statutory baseline under § 80.91(c)(5) may petition EPA to have the summer statutory baseline values under § 80.91(c)(5) apply for purposes of determining the refinery's or importer's compliance baseline under § 80.101(f)(3) for any gasoline which the refiner or importer produces or imports for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands.

(iv) Any petition submitted in accordance with paragraphs (d)(2)(i), (d)(2)(ii) or (d)(2)(iii) of this section shall apply to gasoline produced or imported for use in the areas specified, inclusively.

(3) A petition under paragraphs (d)(1) or (d)(2) of this section must include the following:

(i) Identification of the refinery or importer;

(ii) EPA company and facility registration numbers issued under § 80.76;

(iii) Identification of a contact person; and

(iv) For petitions submitted under paragraphs (d)(1)(i) and (d)(2)(i) of this section:

(A) Revised 1990 individual baseline determination wherein the baseline for gasoline produced or imported for use in Alaska has been evaluated using the winter Complex Model, or gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands has been evaluated using the summer Complex Model, as applicable, with the calculations clearly and fully described and displayed; and

(B) Revised 1990 individual baseline determination for gasoline in the refinery's or importer's original individual 1990 baseline which was not produced or imported for use in Alaska, and/or Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands, inclusive.

(C) Baseline auditor agreement with the revised baseline values.

(4) A petition submitted under this section must be sent in duplicate to: U.S. EPA, Transportation and Regional Programs Division, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(5) EPA reserves the right to request additional information. If such information is not forthcoming in a timely manner, the petition will not be approved.

4. Section 80.101 is amended by revising paragraphs (f)(2), (f)(4)(iii), (g)(1)(ii)(B), (g)(2) introductory text, (g)(2)(i), and (g)(6), and adding paragraphs (f)(3) and (g)(1)(ii)(C) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(f) * * *

(2)(i) In the case of any refiner for any refinery or importer for whom the anti-dumping statutory baseline applies under § 80.91, the anti-dumping statutory baseline for each parameter or emissions performance shall be the compliance baseline for that refinery or importer.

(ii) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(1)(iii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Alaska shall be the winter statutory baseline value under § 80.45(b)(3), Table 5.

(iii) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(2)(iii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands shall be:

(A) The summer statutory baseline value under § 80.45(b)(3), Table 5 for NO_X.

(B) The summer statutory baseline value under § 80.45(b)(3), Table 5 for Toxics less the corresponding value for Benzene under § 80.45(b)(3), Table 4.

(3)(i) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(1)(ii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Alaska shall be the refinery's or importer's winter baseline value determined under § 80.91.

(ii) In the case of any refiner for any refinery or importer that has received approval of a petition submitted under § 80.93(d)(2)(ii), the compliance baseline for each emissions performance for that refinery or importer for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands shall be the refinery's or importer's summer baseline value determined under § 80.91.

(4) * * *

(iii) Any refiner or importer with gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, or the Virgin Islands in its individual baseline that has received approval of a petition submitted under § 80.93(d), must calculate the compliance baseline for each parameter or emissions performance according to the following formulas:

$$CB_{i,j} = B_{i,j} \times \left(\frac{V_{1990j}}{V_j} \right) + DB_{i,j} \times \left(1 - \frac{V_{1990j}}{V_j} \right) V_j \geq V_{1990j} > 0$$

$$CB_{i,j} = B_{i,j} \; V_j < V_{1990j} \text{ or } V_{1990j} = 0$$

$$CB_i = \frac{CB_{i,1} \times V_1 + CB_{i,2} \times V_2 + CB_{i,3} \times (V_3 - V_r)}{(V_1 + V_2 + V_3 - V_r)}$$

Where:

CB_i = The compliance baseline for parameter or emission performance i

$CB_{i,j}$ = The compliance baseline for parameter or emission performance i applicable to the conventional gasoline in production volume Vj

j is a subscript identifying a portion of gasoline and RBOB produced or imported as follows:

j=1: Conventional gasoline supplied to Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands, if gasoline supplied to these areas is covered by a petition for a separate baseline.

j=2: Conventional gasoline supplied to Alaska, if gasoline supplied to this area is covered by a petition for a separate baseline.

j=3: Conventional gasoline, reformulated gasoline, RBOB and California gasoline produced or imported by a refiner or importer, and not included in portions 1 or 2.

V_j = The averaging period volume for portion j.

V_r = The volume of reformulated gasoline, RBOB and California gasoline included in V_3.

$B_{i,j}$ = The refiner/importer's individual baseline for parameter i applicable to the conventional gasoline in portion j, or the applicable statutory baseline if assigned in lieu of an individual baseline.

$DB_{i,j}$ = The statutory baseline for parameter i applicable to the conventional gasoline in portion j (*i.e.* the annual or seasonal statutory baseline).

V_{1990j} = The 1990 baseline volume applicable to portion j.

(g) * * *

(1) * * *

(ii) * * *

(B) Any refiner for any refinery or importer that has received EPA approval of a petition submitted in accordance with the provisions of § 80.93(d) must use the applicable summer complex model under § 80.45 to evaluate its averaging period gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

(C) Any refiner for any refinery or importer that has received EPA approval of a petition submitted in accordance with the provisions of § 80.93(d) must use the applicable winter complex model under § 80.45, using an RVP of 8.7 psi, to evaluate its averaging period gasoline produced or imported for use in Alaska.

(2) In the case of any refiner or importer subject to the anti-dumping statutory baseline, the summer statutory baseline and/or the winter statutory baseline, the refiner or importer shall determine compliance using the following methodology:

(i) Calculate the compliance total for the averaging period for sulfur, T–90, olefins, exhaust benzene emissions, exhaust toxics and exhaust NO_X emissions, as applicable, based upon the anti-dumping statutory baseline value, the summer statutory baseline value, or the winter statutory baseline value, as applicable, for that parameter using the formula specified at 80.67.

* * * * *

(6)(i) The emissions performance of gasoline that has an RVP greater than the RVP required under § 80.27 (''winter gasoline'') shall be determined using the applicable winter complex model under § 80.45, using an RVP of 8.7 psi for compliance calculation purposes under this subpart E.

(ii) Except as provided in paragraph (g)(1)(ii) of this section, the emissions performance of gasoline produced or imported for use in areas that are not subject to the requirements of § 80.27 shall be determined using the applicable winter complex model under § 80.45, using an RVP of 8.7 psi for compliance calculation purposes under this subpart E.

* * * * *

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

§ 80.104 Recordkeeping requirements.

* * * * *

(a) * * *

(2) * * *

(xiii) In the case of gasoline subject to the requirements of § 80.101(f)(2)(ii), (f)(2)(iii), (f)(3)(i) or (f)(3)(ii), documents that reflect that the gasoline was produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and/or the Virgin Islands, as applicable.

* * * * *

Subpart J—[Amended]

6. Section 80.825 is amended by revising paragraph (c)(2) to read as follows:

§ 80.825 How is the refinery or importer annual average toxics value determined?

* * * * *

(c) * * *

(2)(i) The toxics value, T_i, of each batch of conventional gasoline, and the annual average toxics value, T_a, for conventional gasoline under this subpart are in milligrams per mile (mg/mile) and volumes are in gallons.

(ii) Any refiner for any refinery or importer that has received EPA approval of a petition submitted in accordance with the provisions of § 80.93(d) shall determine the toxics value, T_i, of each batch of conventional gasoline produced or imported for use in Alaska, and/or Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands in accordance with § 80.101(g)(1)(ii).

* * * * *

7. Section 80.850 is amended by revising paragraph (c) and adding paragraph (d) to read as follows:

§ 80.850 How is the compliance baseline determined?

* * * * *

(c) Any refiner for any refinery or importer with an approved anti-dumping baseline under § 80.93(d)(1) for gasoline produced or imported for use in Alaska, and/or Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands, and for which a conventional gasoline baseline toxics value for such gasoline can be determined according to § 80.915(b)(1) shall determine its compliance baseline applicable to such gasoline according to the following equation:

$$T_{CBase} = \frac{T_{Base} \times V_{Base} + T_{Exist} \times V_{Inc} + T_{SBase} \times V_{SBase} + T_{SExist} \times V_{SInc} + T_{WBase} \times V_{WBase} + T_{WExist} \times V_{WInc}}{V_{Base} + V_{Inc} + V_{SBase} + V_{SInc} + V_{WBase} + V_{WInc}}$$

Where:

TCBase = Compliance baseline toxics value.

TBase = Baseline toxics value for the refinery or importer, calculated according to § 80.915(b)(1) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

VBase = Baseline volume for the refinery or importer, calculated according to § 80.915(b)(2) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

TExist = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for all gasoline except gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

VInc = Volume of gasoline produced or imported, excluding the volume of gasoline produced or imported for use in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands during the averaging period, which is in excess of VBase.

TSBase = Baseline toxics value for the refinery or importer, calculated according to § 80.915(e)(2)(i) for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

VSBase = Baseline volume for the refinery or importer, calculated according to § 80.915(e)(2)(ii) for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

TSExist = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

VSInc = Volume of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands during the averaging period which is in excess of VSBase.

TWBase = Baseline toxics value for the refinery or importer, calculated according to § 80.915(e)(1)(i) for gasoline produced or imported for use in Alaska.

VWBase = Baseline volume for the refinery or importer, calculated according to § 80.915(e)(1)(ii) for gasoline produced or imported for use in Alaska.

TWExist = The refinery's or importer's anti-dumping compliance baseline value for exhaust toxics, in mg/mi, per § 80.101(f) for gasoline produced or imported for use in Alaska.

VWInc = Volume of gasoline produced or imported for use in Alaska during the averaging period which is in excess of VWBase.

(d) If the refinery or importer produced less gasoline during the compliance period than its applicable baseline volume, the value of V_{inc}, V_{SInc} or V_{WInc}, as applicable, will be zero.

8. Section 80.855 is amended by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?

* * * * *

(b) * * *

(2)(i) A refinery or importer which has an approved anti-dumping baseline under § 80.93(d) for gasoline produce or imported for use in Alaska, and that cannot determine an applicable toxics value according to paragraph (b)(1) of this section, shall have the following as its compliance baseline for the purposes of this subpart: 110.72 mg/mile.

(ii) A refinery or importer which has an approved anti-dumping baseline under § 80.93(d) for gasoline produce or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands and that cannot determine an applicable toxics value according to paragraph (b)(1) of this section, shall have the following as its compliance baseline for the purposes of this subpart: 77.82 mg/mile.

(3) By October 31, 2001, EPA will revise by regulation the default baseline values specified in paragraph (b)(1) of this section to reflect the final 1998–2000 average toxics values.

* * * * *

9. Section 80.910 is amended by revising paragraph (a) to read as follows:

§ 80.910 How does a refiner or importer apply for a toxics baseline?

(a)(1) A refiner or importer shall submit an application to EPA which includes the information required under paragraph (c) of this section no later than June 30, 2001, or 3 months prior to the first introduction of gasoline into commerce from the refinery or by the importer, whichever is later.

(2) A refiner or importer shall submit an application to EPA for the purposes of this subpart simultaneously with the submission of a petition under § 80.93(d).

* * * * *

10. Section 80.915 is amended by redesignating paragraphs (e) through (h) as paragraphs (f) through (i) and adding new paragraph (e) to read as follows:

§ 80.915 How are the baseline toxics value and baseline toxics volume determined?

* * * * *

(e)(1)(i) A refiner or importer which is approved for a petition submitted under § 80.910(a)(2) for gasoline produced or imported for use in Alaska shall calculate the applicable toxics baseline value using the following equation:

$$T_{WBase} = \frac{\sum_{i=1}^{n} (V_i \times T_i)}{\sum_{i=1}^{n} V_i} + M$$

Where:

TWBase = Baseline toxics value for gasoline produced or imported for use in Alaska.

Vi = Volume of gasoline batch i produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

Ti = Toxics value of gasoline batch i produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

i = Individual batch of gasoline produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

n = Total number of batches of gasoline produced or imported for use in Alaska between January 1, 1998 and December 31, 2000, inclusive.

M = Compliance margin.

(ii) The baseline volume associated with the baseline value calculated in paragraph (e)(1)(i) of this section shall be calculated using the methodology in paragraph (b)(2) of this section for the gasoline described in paragraph (e)(1)(i) of this section.

(2)(i) A refiner or importer which is approved for a petition submitted under § 80.910(a)(2) for gasoline produced or imported for use in Hawaii, the

Commonwealth of Puerto Rico, and the Virgin Islands shall calculate the applicable toxics baseline value using the following equation:

$$T_{SBase} = \frac{\sum_{i=1}^{n}(V_i \times T_i)}{\sum_{i=1}^{n} V_i} + M$$

Where:

TSBase = Baseline toxics value for gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

Vi = Volume of gasoline batch i produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

Ti = Toxics value of gasoline batch i produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

i = Individual batch of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

n = Total number of batches of gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands between January 1, 1998 and December 31, 2000, inclusive.

M = Compliance margin.

(ii) The baseline volume associated with the baseline value calculated in paragraph (e)(2)(i) of this section shall be calculated using the methodology in paragraph (b)(2) of this section for the gasoline described in paragraph (e)(2)(i) of this section.

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