

NEW HAMPSHIRE—CARBON MONOXIDE

Designated area:	Designation		Classification	
	Date	Type	Date	Type
Manchester Area: Hillsborough County (part), City of Manchester.	1-29-01	Attainment.		
Nashua Area: Hillsborough County (part), City of Nashua. AQCR 107 Androscoggin Valley Interstate. Coos County	1-29-01	Attainment. Unclassifiable/Attainment.		
AQCR 121 Merrimack Valley—S NH Interstate. Belknap County Cheshire County Hillsborough County (part), Area outside of Nashua and Manchester Merrimack County Rockingham County Stratford County Sullivan County		Unclassifiable/Attainment.		
AQCR 149 Central New Hampshire Intra-state. Carroll County Grafton County		Unclassifiable/Attainment.		

[FR Doc. 00-30275 Filed 11-28-00; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[FRL-6908-8]

RIN 2060-A160

**Petition by American Samoa for Exemption from Anti-Dumping Requirements for Conventional Gasoline**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Direct final rule.

**SUMMARY:** The Environmental Protection Agency (“EPA” or “the Agency”) is granting a petition by the Territory of American Samoa for exemption from the anti-dumping requirements for gasoline sold in the United States after January 1, 1995. This action is being taken because compliance with the anti-dumping requirements is not feasible or is unreasonable due to American Samoa’s unique geographic location and economic factors. If the gasoline anti-dumping exemption were not granted, American Samoa would be required to import gasoline from a supplier meeting the anti-dumping requirements adding a considerable expense to gasoline

purchased by the American Samoan consumer. American Samoa is in full attainment with the National Ambient Air Quality Standard (“NAAQS”) for ozone. This action is not expected to cause harmful effects to the citizens of American Samoa.

EPA is concurrently proposing in the Proposed Rules section of today’s **Federal Register** approval of American Samoa’s petition for reasons discussed in this document. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time. All correspondence should be directed to the addresses shown below.

**DATES:** This action will be effective on January 29, 2001, unless the Agency receives adverse or critical comments or a request for a public hearing by December 29, 2000. If the Agency receives adverse or critical comments, EPA will publish in the **Federal Register** timely notice withdrawing this action and the comments will be addressed in a subsequent final rule. If a request for a public hearing is received, this will be addressed in a subsequent **Federal Register** document.

**ADDRESSES:** Any persons wishing to submit comments should submit them (in duplicate, if possible) to the two dockets listed below, with a copy forwarded to Marilyn Winstead McCall, U.S. Environmental Protection Agency,

Transportation and Regional Programs Division, 1200 Pennsylvania Avenue, NW., (Mail Code: 6406J), Washington, DC 20460.

*Public Docket:* Materials relevant to this petition are available for inspection in public docket A-99-17 at the Air Docket Office of the EPA, Room M-1500, 401 M Street, SW., Washington, D.C. 20460, (202) 260-7548, between the hours of 8 a.m. to 5:30 p.m., Monday through Friday. A duplicate public docket A-91-40 has been established at U.S. EPA Region IX, 75 Hawthorne Street, (Mail Code: A-2-1), 17th Floor, San Francisco, CA 94105, (415) 744-1225, and is available between the hours of 8:30 a.m. to noon, and from 1 p.m. to 5 p.m., Monday through Friday. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Winstead McCall at (202) 564-9029, facsimile: (202) 565-2085, e-mail address: [McCall.mwinstead@epamail.epa.gov](mailto:McCall.mwinstead@epamail.epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially affected by this rule are those involved with the production, distribution, importation, and sale of conventional gasoline used in the Territory of American Samoa. Regulated categories and entities include:

Category: ..... Industry .....	Examples of regulated entities: Gasoline refiners and importers, gasoline terminals, gasoline truckers, blenders, retailers and wholesale purchaser-consumers.
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This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this rule. This table lists the types of entities we are now aware could potentially be affected by this rule. Other types of entities not listed could also be affected by this rule. To determine whether you are affected by this rule, you should carefully examine the applicability requirements in §§ 80.90 and 80.125, Subparts E and F of title 40 of the Code of Federal Regulations (“CFR”). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**I. Background**

*A. Why Is EPA Publishing This Rule Without Prior Proposal?*

EPA views this rule as a noncontroversial amendment to the gasoline anti-dumping regulations and anticipates no adverse comment. American Samoa is in attainment with the air quality standards. However, in the “Proposed Rules” section of today’s **Federal Register**, we are publishing a separate document that will serve as the proposal to approve the direct final rule if adverse comments are filed. If adverse comments are filed, please see **EFFECTIVE DATE** section above.

*B. What Did American Samoa Request in Its Petition?*

On March 9, 1999, the Honorable Tauese P.F. Sunia, Governor of the Territory of American Samoa, petitioned the Agency for an exemption from the requirements of regulations in 40 CFR Part 80 that require conventional gasoline meet certain anti-dumping specifications. Specifically, the petition requested “\* \* \* exemption from the regulations of 40 CFR Part 80 Subparts E and F for the Anti-Dumping of Fuel.”<sup>1</sup>

*C. What Are the Gasoline Anti-Dumping Requirements and How Do They Apply to American Samoa?*

In 1993, EPA promulgated regulations on the production and sale of reformulated gasoline and gasoline that is not required to be reformulated, or

“conventional” gasoline. For conventional gasoline, the gasoline produced by a refiner or importer must not be more polluting or cause more motor vehicle emissions than gasoline produced by that refiner or importer in 1990. In the production of reformulated gasoline (a gasoline that has been further processed and refined to reduce components that contribute most to pollution), a refiner cannot “dump” into its conventional gasoline pool those polluting components removed from the refiner’s reformulated gasoline. This is commonly called the “anti-dumping” gasoline program, and these requirements apply to all gasoline produced, imported, and consumed in the United States and its territories.

*D. What Are the Statutory Provisions Governing This Petition?*

Section 211(k) of the Clean Air Act (“CAA” or the “Act”) requires that gasoline be reformulated to reduce motor vehicle emissions of toxic and tropospheric ozone-forming compounds, and that this reformulated gasoline be sold in the largest metropolitan areas with the most severe summertime ozone levels and in other ozone nonattainment areas that opt into the program. Section 211(k)(8) prohibits conventional gasoline sold in the rest of the country from becoming any more polluting than it was in 1990, thereby ensuring that refiners do not dump fuel components into conventional gasoline causing environmentally harmful emissions restricted in reformulated gasoline. Regulations were promulgated December 15, 1993, and are codified in 40 CFR Part 80.

Section 325 of the Clean Air Act provides that, upon petition by the Governor of Guam, American Samoa, the Virgin Islands, or the Commonwealth of the Northern Mariana Islands, the Administrator may exempt any person or source in such territory from various requirements of the Act. It states that “\* \* \* such exemption may be granted if the Administrator finds that compliance with such requirements is not feasible or is unreasonable due to unique, geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant.”

**II. Discussion of American Samoa’s Petition**

*A. Are There Unique Geographic, Demographic and Climatic Factors in American Samoa That Affect Their Petition?*

American Samoa is a group of five volcanic islands and two coral atolls, located in Polynesia, approximately 2,300 miles southwest of Hawaii and 1,600 miles northeast of New Zealand. American Samoa contains approximately 76 square miles, about two-thirds of which are mountainous with steep slopes that make it virtually inaccessible. The largest island is Tutuila which is approximately 53 square miles. The small island of Aunu’u lies near the east end of Tutuila. The other inhabited islands are Tau, Ofu, Olesaga and Swain’s Island. Rose Atoll is uninhabited. The population was estimated to be 52,400 in 1993—over 96% of which live on the island of Tutuila.

American Samoa has a tropical, maritime climate, with abundant rainfall, winds, and warm, humid days and nights. The mean annual temperature is about 80 degrees. Rainfall is about 125 inches a year near the airport, but varies greatly over small distances because of the mountainous topography. Pago Pago (the major city) which is less than 4 miles north of the airport and at the head of a hill-encircled harbor is open to the prevailing winds and receives nearly 200 inches of rainfall a year. The crest of the mountain range receives over 250 inches each year. American Samoa’s petition states that due to the prevailing easterly trade winds throughout the year, its tropical climate, remoteness, and low population, the air quality in the territory is generally pristine. It is in attainment with the air quality standards including the National Ambient Air Quality (“NAAQS”) standard for ozone.

*B. Are There Economic Factors in American Samoa That Are Unique and That Affect Their Petition?*

Because of its remoteness from the mainland, American Samoa has imported its fuel from refineries in Hawaii and the Far East. American Samoa’s March 9, 1999 petition stated that at the time the petition was filed, almost all of their motor vehicle

<sup>1</sup> Letter from Governor Tauese P.F. Sunia, American Samoa, to Felicia Marcus, Regional Administrator, U.S. Environmental Protection Agency, Region 9, dated March 9, 1999.

gasoline has been supplied by the Tesoro Corporation refinery in Hawaii. This gasoline complied with the gasoline anti-dumping regulations for conventional gasoline. Motor vehicle gasoline represents only about 11 percent of the fuel market in the territory; diesel fuel represents 72 percent; and jet fuel represents about 17 percent. ExxonMobil ("Mobil") supplies the islands with about 65% of the diesel fuel from its refineries in Australia and Singapore.

### C. Other Significant Local Factors

American Samoa's petition states that in 1990, American Samoa's annual per capita income was \$3,039. The U.S. median income is about \$21,120.<sup>2</sup> Moreover, due to relatively high transportation costs, retail gasoline prices are already significantly higher in American Samoa than in the continental U.S. In August 2000, the U.S. average price of regular unleaded gasoline at the retail level was \$1.48 per gallon.<sup>3</sup> In American Samoa, the average price is 20 cents higher than that on the mainland. Therefore, in August 2000, it was around \$1.68 per gallon.

There are 5,126 registered motor vehicles in American Samoa. The motor gasoline market is small compared to the diesel market. The American Samoan government owns its own fuel terminal and fuel dock and selects a terminal operator to manage the facilities. A U.S. District Court (for California) determined in 1973 that one oil marketer had violated the Sherman Act by attempting to monopolize the distribution and sale of petroleum products in American Samoa. Subsequently, the Court issued a "Court Plan," the goal of which was to assure an equal competitive position to all suppliers of petroleum products in American Samoa, including the opportunity to use the tank farm for storage on a shared basis. The American Samoa government's aim was to assure that American Samoans receive the benefits of competition by having a choice of products at the lowest prices.

Tesoro has supplied American Samoa with complying gasoline from 1995 through 1999. During this time, Tesoro also operated the fuel terminal in its capacity as terminal operator.

### D. Enforcement Deferred ("Interim") Period

Since the petition was filed, EPA learned in November 1999, that Tesoro

was withdrawing from the American Samoan gasoline market effective January 1, 2000.<sup>4</sup> This company has been supplying American Samoa with about 80% of its gasoline, whereas Mobil has been supplying about 20% , albeit at a higher price (due to the need to make special runs of compliant product from the company's Melbourne, Australia refinery). However, this company does not always supply fuel from the Australian refinery—sometimes their cargoes originate from a Singapore refinery which does not have the capability of making complying gasoline.

Negotiations with BP South West Pacific Limited ("BP") have concluded in BP's taking over the gasoline supply commitments formerly held by Tesoro, beginning January 1, 2000. They estimate that "huge costs" will result if they are required to comply with the anti-dumping requirements, with as much as 14 to 18 cents more per gallon being charged the American Samoan consumer. Since a gallon of gasoline on the islands is already 20 cents more per gallon than on the U.S. mainland, the cost to the American Samoan citizen for a gallon of complying gasoline could be as much as 38 cents more per gallon. Consequently, American Samoa petitioned EPA on December 30, 1999, for " \* \* \* enforcement discretion by declining to enforce the gasoline anti-dumping regulations pending the effectiveness of the anticipated rule."<sup>5</sup> Subsequently, EPA granted enforcement discretion for a one year period—from January 1, 2000 to January 1, 2001.<sup>6</sup>

The end result of the November 1999 notification of Tesoro's withdrawing from the American Samoan market is that American Samoa is left with two importers (Mobil and BP) that are willing to supply American Samoa with gasoline. The cost of the gasoline supplied will be significantly lower if they are not required to comply with the gasoline anti-dumping regulations.

## III. Clarification of the Gasoline Anti-Dumping Requirements (Subparts E and F)

### A. How Is Compliance With the Gasoline Anti-Dumping Requirements Measured?

Compliance is measured by comparing emissions of a refiner's or importer's conventional gasoline against those of a baseline gasoline—either a baseline based on the quality of the refiner's or importer's 1990 gasoline or on a statutory baseline specified by the Clean Air Act. EPA's regulations at 40 CFR part 80, subparts E and F require a refiner or importer that establishes a baseline to hire an independent auditor to verify its baseline parameters. They also require that each refiner or importer maintain records and report to EPA certain information pertaining to production of conventional gasoline, beginning in February 1996, and every subsequent year.<sup>7</sup>

### B. Which of the Gasoline Parameters Are Required To Meet the Baseline Under the Anti-Dumping Regulations?

Section 211(k)(8) requires that average per gallon emissions of volatile organic compounds (VOC), carbon monoxide (CO), nitrogen oxides (NO<sub>x</sub>) and toxics due to conventional gasoline produced by a refiner or importer not increase over 1990 levels for each refiner or importer. Since VOC and CO emission increases are expected to be controlled through other regulatory programs, the anti-dumping provisions are limited to regulating emissions of toxics and NO<sub>x</sub> emissions.

Pursuant to section 211(k)(8) of the Act, EPA adopted the regulations in subpart E to address exhaust benzene, total exhaust toxics and NO<sub>x</sub> emissions from conventional gasoline use. Under a simple emissions model, applicable from January 1, 1995 to January 1, 1998, a limit is set for sulfur, olefins and T90 as well as exhaust benzene. A more complex emissions model was required January 1, 1998, with limits set on exhaust toxics and NO<sub>x</sub>. All the limits are set as annual averages.

## IV. Rationale for Exemption

### A. Unique Geographic and Economic Factors Relating to an Exemption in American Samoa.

Due to the distance from the U.S. mainland, American Samoa has been supplied with most of its gasoline by Tesoro Corporation's Hawaii refinery. There is another company operating a refinery in Hawaii; however, since 1991, only the Tesoro refinery has been

<sup>2</sup> U. S. Bureau of Census (Phone conversation December 1999 with EPA employee).

<sup>3</sup> "The Oil Daily," Vol. 50, No. 167, August 30, 2000, page 7.

<sup>4</sup> Letter from Jack Kachmarik, Chief Petroleum Officer, American Samoa Government to EPA, dated November 12, 1999.

<sup>5</sup> Letter from Tauese P.F. Sunia, Governor of the Territory of American Samoa, to Mr. Robert W. Perciasepe, dated December 30, 1999.

<sup>6</sup> Letter from Steven A. Herman, Assistant Administrator, EPA Office of Enforcement and Compliance Assurance, to Governor Tauese P.F. Sunia, dated January 14, 2000.

<sup>7</sup> See 40 CFR part 80, §§ 80.105 and 80.125.

interested in servicing the American Samoan gasoline market. Prior to 1991, both Shell Oil and Mobil Oil supplied gasoline to American Samoa. These companies have since withdrawn as full time suppliers from the American Samoan market. Therefore, since 1995—the year the gasoline anti-dumping regulations went into effect—American Samoa has been mainly supplied with gasoline complying with the anti-dumping regulations from the Tesoro Hawaiian refinery.

Tesoro was also selected to operate the petroleum terminals on the islands in a 1998 request for proposals issued by the American Samoan government. American Samoa's petition states that a virtual monopoly situation exists by this one company by their controlling the operation of the terminals as well as almost all of the gasoline supply. The petition states that this is one reason why other companies have been discouraged from entering the gasoline market in American Samoa.

The Court Plan mentioned previously was modified in 1994 retaining the Court's jurisdiction over the terminal facilities and preserving the ability of potential new suppliers to use the facilities on a shared-cost basis. The supporting material presented to the court included a permit and agreement between American Samoa and the terminal operator which contained a modified maximum allowable price formula as a safeguard against excessive monopoly pricing by the terminal operator. American Samoa's petition states that because of this dual responsibility by Tesoro and the fact that only Tesoro was capable of supplying complying gasoline on a full time basis, a monopoly situation has existed and, therefore, competition was discouraged.

Two other companies—Mobil and BP—entered the fuel market in 1998, and mainly import diesel fuel to the islands. They have not been able to import gasoline that meets the anti-dumping regulations (except for a small amount of "special order" gasoline imported from Australia by Mobil that is offered at a much higher price than that offered by Tesoro). Mobil and BP operate refineries in Australia and Singapore. As previously stated, Mobil operates a refinery in Melbourne, Australia that makes some gasoline which complies with the anti-dumping regulations. However, because this gasoline is "specially ordered," it costs the American Samoan consumer about 10 cents more per gallon above the normal prices, and Mobil cannot assure a continuous supply. Also, Mobil does not always supply the American

Samoan fuel market out of their Melbourne refinery. Some cargoes (containing mostly diesel fuel) come from their refineries in Singapore which do not make the "special-order" gasoline.

#### *B. Exemption Basis*

Mobil and BP have indicated an interest in supplying the American Samoa market by agreeing to take over the marketing commitments formerly held by Tesoro after that company withdrew in January 2000.<sup>8</sup> Both of these companies supply gasoline to Fiji, Western Samoa and other Pacific Islands. Transportation costs dictate that these Pacific Islands' markets be supplied by Far Eastern refineries. While EPA's regulations do not apply to those Far Eastern refineries, they do apply to any importer of gasoline into the U.S. and its territories. The American Samoa gasoline market is a very small market—only approximately 5,000,000 gallons of motor gasoline are imported per year.

After the expiration of the interim period and if the exemption is not granted, Mobil and BP would be required to supply American Samoa with gasoline that does not exceed the statutory baseline emissions for exhaust toxics and NO<sub>x</sub>—the two emissions controlled by the anti-dumping program. The statutory baseline is a combination of summer and winter components, including emissions calculated under the appropriate seasonal version of the Complex Model, the tool used in determining compliance with the reformulated gasoline and anti-dumping regulations.<sup>9</sup> Additionally, the anti-dumping regulations require that the emissions of gasoline sold in areas not subject to EPA's gasoline volatility requirements<sup>10</sup> which include American Samoa and other U.S. territories, be evaluated using only the winter version of the Complex Model. As discussed in a recent rulemaking (see 64 FR 30904, June 9, 1999), it is somewhat more difficult to produce or import gasoline which meets the statutory baseline requirements when that gasoline must all be evaluated using the winter version of the Complex Model, because the winter version predicts higher emissions than the summer version, and, as stated, the statutory baseline is a combination of the summer and winter components. In the referenced rulemaking, under

certain conditions, a refiner is allowed to evaluate its gasoline using only the summer model (given American Samoa's climate, it would be more appropriate to use the summer model if a single seasonal model is being considered) and compare the results to only the summer baseline. The quality of a few batches shipped to American Samoa (by BP) in 2000 (February 8, 2000 to June 23, 2000, which represents about 30 percent of the total gasoline volume imported to the islands annually), showed that the gasoline, when evaluated with either seasonal model and compared to the corresponding statutory seasonal baseline, was close to complying. However, both Mobil and BP have indicated that the gasoline sent to Samoa will be produced at a number of foreign refineries and that such quality cannot be guaranteed, especially considering transportation costs and the small volumes of gasoline used in American Samoa. In this situation, compliance with the statutory baseline (either the annual average statutory baseline or either seasonal statutory baseline) can be even more onerous because the quality (with regard to fuel properties like benzene and sulfur content) of gasoline produced at Far Eastern refineries can be quite different from that of gasoline produced by the typical mainland U.S. refinery. For example, Singapore refineries typically produce gasoline having lower concentrations of sulfur and olefins and relatively higher concentrations of benzene and aromatics. EPA understands that gasoline being imported from the Singapore refineries would be similar in quality to that being imported into Guam and the Northern Mariana Islands where exemptions from the gasoline anti-dumping regulations apply. For a more detailed discussion of these differences, please see notices of direct final decision exempting gasoline from the anti-dumping requirements in Guam and the Northern Mariana Islands.<sup>11</sup>

Because of these differences in fuel quality, and because of the requirement that American Samoa gasoline be evaluated using the winter version of the Complex Model, EPA believes the Far Eastern gasoline that would be available to American Samoa cannot consistently satisfy the anti-dumping requirements when compared to statutory baseline gasoline. Additionally, EPA believes that consistent compliance with either the winter or summer statutory baseline

<sup>8</sup> See Letter from Jack Kachmarik, Chief Petroleum Officer, American Samoa Government, to EPA, dated November 12, 1999.

<sup>9</sup> See 40 CFR 80.101(f).

<sup>10</sup> See 40 CFR 80.27.

<sup>11</sup> See 61 FR 53854, October 16, 1996, and 62 FR 63855, December 3, 1997, respectively.

(after evaluating the gasoline using the corresponding seasonal model) cannot practically be guaranteed (*i.e.*, without unacceptable economical impacts to the American Samoa consumer and without environmental benefit), and thus is not a reasonable alternative to exemption from the anti-dumping requirements in this situation. If this exemption were not granted, importers of gasoline to American Samoa would have to seek out and transport gasoline with the qualities which would allow it to comply with the statutory baseline annual average exhaust toxics and NO<sub>x</sub> emissions. This would significantly increase the price of gasoline in American Samoa because transportation costs for such a small quantity of gasoline would be high. Gasoline in American Samoa is already 20 cents per gallon higher than on the mainland, and BP and Mobil state that price increases of 10 cents more per gallon could be added to the already high price of gasoline in American Samoa if the petition is not granted. Since Tesoro, whose refinery is located in Hawaii, withdrew from the American Samoa market, there have been no importers in the Pacific Rim that have indicated to EPA their willingness to supply American Samoa with gasoline that complies with the statutory baseline. Therefore as no optional sources of complying gasoline have been forthcoming, American Samoa is reliant upon BP and Mobil Far Eastern refineries to fill their gasoline supply. Both companies state that if the exemption is granted the price of gasoline could decrease by 5 to 10 cents per gallon. This decrease would be partly due to increased competition and to these companies' abilities to sell solely on the basis of lower Singapore prices, which alone, would drop the price by 4 to 5 cents per gallon. EPA does not expect that exempting gasoline imported to American Samoa from the anti-dumping requirements will negatively affect air quality.

#### Final Action

EPA has decided to grant a petition by the Territory of American Samoa and exempt the Territory of American Samoa from compliance with the anti-dumping standards for conventional gasoline under section 211(k)(8). The Agency believes that compliance with the gasoline anti-dumping requirements is unreasonable given the significantly increased costs to consumers in American Samoa in achieving compliance. These increased costs are directly attributable to American Samoa's location and resulting inability of importers to comply with the anti-

dumping requirements without significantly greater costs than those expected for importers in the U.S. mainland. Gasoline price increases of the magnitude expected to result from compliance with the conventional gasoline anti-dumping regulations at 40 CFR part 80, subparts E and F could be especially burdensome for the many citizens of American Samoa.

In addition, despite its geographic remoteness from the mainland, compliance with the anti-dumping provisions might require that American Samoa import conventional gasoline from the U.S. mainland, greatly increasing the cost of conventional gasoline for the American Samoans. EPA finds that these economic factors are unique to the Territory of American Samoa.

This exemption applies to all importers and suppliers of gasoline in American Samoa. EPA will review and reopen this exemption in the future if conditions change to warrant such an action.

#### VI. Administrative Requirements

##### A. Executive Order 12866

Under Executive Order 12866, the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

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

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

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866.

##### B. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and therefore is not subject to these requirements.

##### C. 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 that achieve 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 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 rule imposes no enforceable duty or mandate on any State, local or tribal governments or the private sector. Rather, today's rule removes enforceable duties and mandates on these entities.

##### D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks 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.

This rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

#### *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" as defined in the Executive Order include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's consultation with State and local officials, a summary of the nature of their concerns and EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, it must include a certification from EPA's Federalism Official stating that EPA has met the requirements of

Executive Order 13132 in a meaningful and timely manner.

This rule will not have a substantial direct effect on States or local governments, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. This rule, by exempting the gasoline anti-dumping requirements in American Samoa, removes the federal role of mandating and enforcing these gasoline requirements.

#### *F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 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 rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

#### *G. Congressional Review*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement, 5 U.S.C. 808(2). EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(a).

#### *H. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements 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 not-for-profit enterprises, and small governmental jurisdictions.

After considering the economic impacts of today's direct final rule, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant *adverse* economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Since this rule removes the gasoline anti-dumping regulations from American Samoa, we conclude that today's direct final rule will relieve regulatory burden for all small entities.

#### *I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless, the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns and statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting

elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not create any mandates or impose any obligations on State, Local, or Tribal governments, and thus does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

#### *J. Electronic Copies of Rule*

A copy of this action is available on the Internet at <http://www.epa.gov/otaq> under the title: "Direct Final Rule on Exemption from Anti-Dumping Requirements for Conventional Gasoline."

#### *K. Statutory Authority*

Authority for the action described in this notice is in section 325(a)(1) (42 U.S.C. 7625-1(a)(1)) of the Clean Air Act as amended.

Dated: November 17, 2000.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 00-30273 Filed 11-28-00; 8:45 am]

**BILLING CODE 6560-50-P**

## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 73**

[DA 00-2613; MM Docket No. 99-229; RM-9479]

#### **Radio Broadcasting Services; Dayton, Incline Village and Reno, Nevada**

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the jointly filed request of Salt Broadcasting, LLC and Americom Las Vegas Limited Partnership substitutes Channel 261C1 for Channel 261C2 and reallocates Channel 261C1 from Incline Village, Nevada to Dayton, Nevada, as the community's first local commercial FM service and reallocates Channel 295C from Reno to Incline Village in order for the community to retain a first local aural service. See 64 FR 34755, June 29, 1999. Channel 261C1 can be allotted to Dayton in compliance with the Commission's minimum distance separation requirements with a site restriction of 36.8 km (22.9 miles) northeast, at coordinates 39-29-27 NL; 119-19-03 WL. Channel 295C can be allotted to Incline Village with a site restriction of 10.1 km (6.3 miles) northeast, at the Station KRNO-FM's presently licensed transmitter site at coordinates 39-18-38 NL; 119-53-01 WL.

**DATES:** Effective January 2, 2001.

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 418-2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99-229, adopted November 8, 2000, and released November 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 1231 20th Street, NW, Washington, DC 20036.

#### **List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—RADIO BROADCAST SERVICES**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Nevada, is amended by adding Channel 261C1 at Dayton, by removing Channel 261C2 at Incline Village and adding Channel 295C at Incline Village, and by removing Channel 295C at Reno.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00-30369 Filed 11-28-00; 8:45 am]

**BILLING CODE 6712-01-P**