

Commission-instituted complaint or the findings of fact or conclusions of law in the settlement order entered by the Commission or a court shall be treated as a denial, unless the party states that he or she neither admits nor denies the allegations or the findings and conclusions. In that event, the proposed offer of settlement, consent or consent order must include a provision stating that, by neither admitting nor denying the allegations, findings or conclusions, the settling respondent or defendant agrees that neither he or she nor any of his or her agents or employees under his authority or control shall take any action or make any public statement denying, directly or indirectly, any allegation in the complaint or findings or conclusions in the order, or creating, or tending to create, the impression that the complaint or the order is without a factual basis; provided, however, that nothing in this provision shall affect the settling respondent's or defendant's—

- i. Testimonial obligation, or
- ii. Right to take legal positions in other proceedings to which the Commission is not a party.

Issued in Washington, DC on June 1, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS-FRL-6354-1]

RIN 2060-A129

Regulation of Fuel and Fuel Additives: Modification of Compliance Baseline

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: With today's action the U.S. Environmental Protection Agency ("EPA", "the Agency", or "we") will allow the conventional gasoline emissions, from gasoline that a refiner

sells in Puerto Rico in excess of its baseline volume of Puerto Rico gasoline, to be evaluated using only the summer version of the Complex Model.

Additionally, the reformulated gasoline program's anti-dumping compliance baseline calculation will be modified. This modification will replace the annual average statutory baseline term with a summer statutory baseline term for purposes of evaluating a refiner's excess Puerto Rico gasoline. Finally, the summer Complex Model, which is more climatically appropriate for evaluating Puerto Rico gasoline, will replace the winter Complex Model for all baseline and compliance calculations for Puerto Rico gasoline. These provisions will apply to any refiner that has Puerto Rico gasoline in its individual baseline, has increased production of gasoline for sale in Puerto Rico above its individual baseline volume of Puerto Rico gasoline, and petitions the Agency to apply the modified compliance baseline to its Puerto Rico gasoline. Any refiner submitting such a petition must recalculate its individual baseline using the summer Complex Model for all Puerto Rico gasoline.

DATES: This action will be effective on July 26, 1999 unless notice is received by July 9, 1999 from someone who wishes to submit adverse or critical comments. If such comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Interested parties may submit written comments in paper form and/or by E-mail. To ensure their consideration by EPA, all comments must be submitted to EPA by the date indicated under **DATES** above. Paper copies of written comments should be submitted (in duplicate if possible) to Public Docket No. A-99-16 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket Section, Room M-1500, 401 M Street, S.W., Washington, D.C. 20460. The

Agency requests that a separate paper copy also be sent to either person listed below under **FOR FURTHER INFORMATION CONTACT**. EPA also encourages that an electronic copy of comments (in ASCII format) accompany the submission of a paper copy (by E-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette). Public comments may also be submitted by E-mail to the docket at the address listed above without the submission of a paper copy. However, to ensure the clarity of the submission, EPA encourages that a paper copy accompany the E-mail submission. If comments are submitted by E-mail alone, EPA requests that a copy of the E-mail message that contains the comments be sent to either person listed below under **FOR FURTHER INFORMATION CONTACT**.

Materials related to this rulemaking are available for review at EPA's Air Docket at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260-7548, and the facsimile number is (202) 260-4400. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Christine M. Brunner or Felicia Seals-Buchanan, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214-4287 or x4589, FAX (734) 214-4051, E-mail brunner.christine@epa.gov or seals-buchanan.felicia@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

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

Category	NAICS ¹ codes	SIC ² codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners.

¹ North American Industry Classification System (NAICS).

² Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but 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 potentially be affected by this action. Other types of entities not listed in the table could also be affected.

To decide whether your organization might be affected by this action, you should carefully examine this action and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the

persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Access to Rulemaking Documents Through the Internet

Today's document is available electronically on the day of publication from the EPA Internet Web site listed

below. Electronic copies of the preamble, regulatory language and other documents associated with today's proposal are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for Internet connectivity.

EPA Web Site:

<http://www.epa.gov/docs/fedrgstr/epa-air/>
(Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site:

<http://www.epa.gov/omswww/>
(Look in "what's New" or under the specific rulemaking topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

I. Background

A. Anti-Dumping Standards

Section 211(k) of the Clean Air Act requires the U.S. Environmental Protection Agency ("EPA" or "we") to establish standards for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas. In addition, EPA established standards for non-reformulated, or conventional, gasoline used in the rest of the country. These standards are called the anti-dumping standards. EPA adopted the anti-dumping standards to prevent refiners from dumping into conventional gasoline the dirty gasoline components that are removed when RFG is produced. The anti-dumping standards require refiners to produce conventional gasoline each year that is as clean as the gasoline produced by the refiner in 1990.

In order to be in compliance with the anti-dumping standards, the exhaust toxics and nitrogen oxides (NO_x) emissions performance of a refinery's conventional gasoline can be no dirtier than the refinery'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 Model¹, based on measured properties, such as sulfur and benzene content, and Reid vapor pressure (RVP). The Complex Model includes both a summer version and a winter version. The anti-dumping requirements at 40 CFR 80.101(g) require refiners to use the summer

Complex Model to evaluate conventional gasoline supplied to an area subject to EPA's gasoline volatility standards when these standards are in effect, and requires them to use the winter Complex Model to evaluate all other gasoline. The regulations also require refiners to evaluate the exhaust toxics and NO_x emissions performance of gasoline sold in areas not subject to those volatility standards, such as Puerto Rico, Hawaii, and Alaska, using the winter Complex Model.

B. Compliance Baseline Calculation

In general, a refiner's standard for compliance is its individual 1990 refiner baseline. However, when a refiner's annual gasoline production volume (including RFG, conventional gasoline and reformulated gasoline blendstock for oxygenate blending) exceeds its baseline volume (the volume of gasoline that the refiner produced in 1990), the refiner's conventional gasoline compliance standard for exhaust toxics and NO_x is different from its individual baseline values for these emissions. The standard is different because EPA requires refiners to compare the excess volume to the statutory baseline instead of their individual baseline. Because the statutory baseline was designed to reflect 1990 gasoline generally, the quality of all the excess gasoline produced approximates the 1990 average national quality.

In order to determine a refiner's compliance standard for the averaging period, the anti-dumping provisions at 40 CFR 80.101(f) require the use of a specified compliance baseline equation. This equation establishes a single compliance baseline that compares a refiner's conventional gasoline with that refiner's individual baseline. However, a portion of the compliance baseline equation compares the emissions of a refiner's excess volume of conventional gasoline to the annual average statutory baseline emissions, a combination of the summer and winter statutory baseline emissions. EPA requires refiners to evaluate the emissions of gasoline sold in areas not subject to EPA's volatility requirements using only the winter Complex Model. Refiners must then compare these emissions to a compliance baseline equation that is based in part on the summertime portion of the statutory baseline. Because different assumptions drive the summer and winter versions of the Complex Model, this may force refiners to make quality changes in their gasoline pools resulting in unintended negative effects for refiners and the environment.

C. Seasonal Impacts of the Complex Model

A detailed discussion of the development of the summer and winter versions of the Complex Model was included in the Final Regulatory Impact Analysis (RIA) for Reformulated Gasoline². Both models are based on MOBILE model outputs. MOBILE model outputs for the summer model assume ambient temperatures of 69°F–94°F. MOBILE model outputs for the winter model assume ambient temperatures of 39°F–57°F. Additionally, 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 than the summer Complex Model, on a mg/mile basis.

D. July 11, 1997 Proposal

EPA proposed a variety of changes to the reformulated gasoline and anti-dumping regulations on July 11, 1997 (62 FR 37337). Classifying gasoline as summer or winter gasoline was one issue that EPA discussed in that proposal. In that discussion, EPA stated that it would classify all gasoline produced for use outside the continental U.S., where the federal RVP standards do not apply, as winter gasoline year round because:

(1) EPA required refiners to calculate the emissions of all gasoline used outside of the continental U.S. using the winter Complex Model for baseline purposes;

(2) The anti-dumping standards compare the emissions of a refinery's gasoline during an averaging period with the refinery's baseline emissions; and

(3) The comparison of baseline emissions to averaging period emissions is valid only if the refinery uses the same criteria in the baseline and in the averaging period for classifying gasoline as summer or winter.

One commenter, Amerada Hess, stated that it was inappropriate for refiners to use the winter Complex Model to evaluate the gasoline produced for certain areas outside the continental U.S. and not subject to the federal volatility requirements. They offered the following reasons:

(1) In the proposal, "EPA is acknowledging that the classification of gasoline as winter or summer actually depends on the season in which it is sold" (and not just its RVP);

¹ 40 CFR 80.45.

² December 13, 1993.

(2) EPA's MOBILE model, upon which EPA based the Complex Model, reflects a temperature range of 39°F–57°F when used to evaluate winter emissions;

(3) It is inappropriate for EPA to assign gasoline for tropical climates such as Puerto Rico and Hawaii, to the winter category from a "seasonal weather gasoline characteristic standpoint";

(4) The RVP of the gasoline sold in these (tropical) areas reflects summertime RVPs rather than wintertime RVPs;

(5) The July 1, 1994 RFG Question and Answer Document states that refiners are to evaluate gasoline which remains seasonably the same throughout the year using the seasonal Complex Model which matches the year round season.

Additionally, when the volume of gasoline sold in such areas increases over baseline levels, under 40 CFR 80.101(f)(4)(ii) EPA requires refiners to calculate the standard for the extra volume using annual exhaust toxics and NO_x emissions values which include both summer and winter Complex Model calculations. At the same time, EPA requires calculation of emissions (of gasoline sold in such areas) for compliance purposes using only the winter Complex Model. Consequently, according to the commenter, the refiner is unfairly penalized.

II. Action

A. Summary

With today's action, EPA will allow refiners, upon petition, to replace the winter Complex Model with the summer Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline sold in Puerto Rico, if the refiner has Puerto Rico gasoline in their individual baseline, and if the refiner currently sells a volume of gasoline in Puerto Rico greater than that refiner's 1990 Puerto Rico baseline volume. We are taking this action in order to address specific circumstances where inconsistencies in the RFG program's anti-dumping provisions have had significant unintended negative impacts.

The anti-dumping regulations currently require conventional gasoline

sold in Puerto Rico to be evaluated using the winter Complex Model, for purposes of both compliance calculation and baseline calculation up to a refiner's 1990 baseline volume. However, the current regulations require a refiner to use the statutory baseline for evaluating volumes of Puerto Rico gasoline above that refiner's 1990 baseline volume. The statutory baseline includes both a summer and winter Complex Model component. As a result, for excess gasoline, there is an unintended mismatch between the refiner's baseline calculation (which uses only the winter Complex Model) and the compliance baseline calculation (which uses a combination of the summer and winter Complex Models). This results in the appearance of greater emissions in comparison to an analysis using the same seasonal version of the Complex Model for both of these calculations. For those refiners with Puerto Rico gasoline in their individual baseline, that have increased the volume of gasoline that they sell in Puerto Rico above their 1990 baseline volumes of Puerto Rico gasoline, this incongruence has had a significant adverse economic effect.

To solve this specific problem, EPA is modifying the compliance determination of the gasoline a refiner sells in Puerto Rico above that refiner's 1990 Puerto Rico baseline volume. Refiners will evaluate such gasoline using only a single statutory seasonal term (the summer term) in the compliance baseline determination. Additionally, given Puerto Rico's consistently warm climate, we recognize that the summer Complex Model is the most appropriate model for evaluating emissions in Puerto Rico under the anti-dumping program. Thus, we are also requiring that all of the conventional gasoline sold in Puerto Rico (by a refiner that makes a successful petition under this provision) will be evaluated using the summer Complex Model. The approval of a petition under today's action requires a refiner to recalculate the Puerto Rico component of its individual baseline using the summer Complex Model. As a result, such a refiner will evaluate all of its Puerto Rico gasoline using a single seasonal version of the Complex Model. Today's action applies to each batch of gasoline

produced by an eligible refiner and destined for Puerto Rico, even if a small portion of the batch is subsequently sent to other nearby areas with climates similar to Puerto Rico and which are also not subject to EPA's volatility standards.

B. Modified Compliance Baseline Equation

As discussed in section I.B., when refiners sell gasoline in excess of their individual baseline volume in areas such as Puerto Rico, which are not subject to the federal volatility requirements, use of the current compliance baseline equation may have negative economic implications for refiners and unintended negative environmental effects. EPA requires refiners to evaluate such gasoline using the winter Complex Model. However, in the compliance baseline equation, all excess gasoline is compared to the annual average statutory baseline, which is composed of summer and winter components. Because the winter Complex Model predicts higher emissions for exhaust toxics and NO_x than does the summer model, refiners in this situation are forced to meet a more stringent compliance standard in these areas than would be required if the seasonal Complex Models used to evaluate such gasoline were the same. Accordingly, they must divert cleaner gasoline from other areas.

To remedy this situation, EPA is modifying the compliance baseline equation at § 80.101(f)(4)(ii). This modification will ensure that the performance of gasoline sold in Puerto Rico in excess of a refiner's baseline volume of Puerto Rico gasoline is compared to the appropriate corresponding seasonal baseline. We believe that the summer Complex Model is the most appropriate model for evaluating Puerto Rico gasoline.

EPA is including the following equation at 40 CFR 80.101(f)(4). This equation includes separate terms for evaluating the gasoline subject to the refiner's individual baseline and excess gasoline subject to the summer model-only requirements.

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_a} \right) \right) + \left(BS_i * \left(\frac{V_{1990s}}{V_a} \right) \right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_a} \right) * \left(1 - \frac{V_{as}}{V_a} \right) \right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_a} \right) * \left(\frac{V_{as}}{V_a} \right) \right)$$

where:

CB_i = the compliance baseline value for emissions performance i

B_i = the refiner's or importer's individual annual baseline for

emissions performance *i* under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27

BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico, for emissions performance *i*

DBA_i = annual anti-dumping statutory baseline value for emissions performance *i* under § 80.91(c)(5)(iv)

DBS_i = the summer statutory baseline value for emissions performance *i* under § 80.45(b)(3), table 5

V_a = total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period

V_{1990} = 1990 baseline volume under § 80.91(f)(1)

V_{1990s} = 1990 baseline volume of gasoline supplied to Puerto Rico

V_{as} = volume of conventional gasoline supplied during the averaging period to Puerto Rico

i = exhaust toxics or NO_x emissions performance

C. Seasonal Re-designation of Puerto Rico Gasoline

The emissions of Puerto Rico gasoline will be evaluated using only the summer Complex Model for any refiner making a successful petition under this provision. As a result of comments in response to the July 11, 1997 NPRM, EPA evaluated the average annual climatic conditions and gasoline RVP levels for Puerto Rico.³ We have concluded that Puerto Rico's relatively constant year round ambient temperatures, as well as its gasoline RVPs, are more consistent with the conditions under which EPA intended the summer Complex Model to apply than they are with the conditions under which we intended the winter Complex Model to apply. Additionally, Puerto Rico's ambient temperature is consistent with conditions typical of a high ozone season, when summertime gasoline, and thus the summer Complex Model, is meant to be used. Because this action involves the calculation of compliance baselines for gasoline sold by refiners in Puerto Rico, we are taking this opportunity to address the seasonal appropriateness of the Complex Model that refiners must use to evaluate individual batches of gasoline. Accordingly, we will require refiners to evaluate all of their Puerto Rico gasoline

using the summer Complex Model for compliance and baseline purposes. We are, however, expressly limiting the applicability of this change to refiners that petition for, and are granted, compliance baseline corrections under the provisions of this rulemaking.

D. Environmental Impact

We are presently aware of only one refiner for which the current regulations have significant unintended negative economic and environmental impacts. Specifically, the current anti-dumping regulations applicable to Puerto Rico gasoline negatively affect the quality of this refiner's mainland reformulated gasoline by requiring the refiner to shift certain production from RFG to conventional gasoline in order to comply with the requirements for its Puerto Rico conventional gasoline. Thus the emissions in areas which most need clean gasoline—ozone nonattainment areas participating in the RFG program—are unnecessarily elevated. Conversely, Puerto Rico, which is in attainment for ozone, is receiving cleaner conventional gasoline due to the unintended results of the current anti-dumping rules.

Today's action helps to provide the cleanest gasoline where it is needed most. It is possible that the gasoline supplied by this refiner to Puerto Rico, and other conventional gasoline areas, could see increases in the emissions regulated under the anti-dumping requirements. However, this action will allow refiners to use the most seasonally-appropriate Complex Model for gasoline sold in Puerto Rico, and will not result in an increase in emissions from conventional gasoline compared to 1990 levels. Thus, the goals of the anti-dumping program will be preserved. Indeed, this adjustment simply works to restore the proper balance to the distribution of environmental benefits under the RFG program.

These requirements apply to gasoline produced for calendar year 1999 and beyond. EPA will need more information from other refiners before proposing to broadly apply similar provisions throughout Puerto Rico and in other areas not subject to EPA's volatility requirement.

E. Economic Impact

EPA expects today's action to have minimal economic consequences. Most affected refiners are operating satisfactorily under the current requirements and are likely to be unaffected by this rule. EPA believes that refiners satisfying the requirements of this provision will petition to re-

evaluate the Puerto Rico gasoline in their baseline using the summer Complex Model only if it is economically beneficial for them to do so. Therefore, EPA anticipates no adverse economic impacts as a result of today's rule.

F. Limited Applicability

The provisions discussed above (i.e., the modified compliance baseline equation and the uniform use of the summer Complex Model) apply only to refiners that have Puerto Rico gasoline in their individual baseline, that have increased the volume of gasoline that they sell in Puerto Rico above their 1990 baseline volumes of Puerto Rico gasoline, and that petition the Agency for such a change. Once such a petition is made and granted, the new method for determining compliance would apply from then on, regardless of any future changes in the refiner's Puerto Rico gasoline production or distribution. To date, only one refiner has notified EPA of potential adverse effects due to the application of the current regulations.

While EPA believes that use of the modified compliance baseline equation and seasonally-appropriate Complex Model may be technically appropriate in all areas not subject to the federal volatility requirements, there are a number of factors that EPA is unable to evaluate at this time. Consequently, we believe it best to limit the applicability of this action to refiners of Puerto Rico gasoline that can fulfill the other requirements of this rule. The following section discusses the implications of a broader application of the principles underlying today's action, and highlights the difficulties inherent in evaluating the appropriateness of such a generally applicable provision.

III. Implications for Broader Future Action

Today's action is limited in applicability to Puerto Rico refiners that meet the criteria enumerated in section II of this document. However, we anticipate that a similar but more generally applicable provision may be appropriate in the future. Such a provision would presumably apply to all areas that are not subject to the federal volatility requirements codified at 40 CFR 80.27.⁴ The substance and

³ 30 year average maximum and minimum temperatures by month, and RVP specifications.

⁴ EPA believes that gasoline sent to areas such as Puerto Rico and Hawaii (and perhaps Guam, the U.S. Virgin Islands (USVI), the Northern Marianas and American Samoa) might be most appropriately evaluated using only the summer Complex Model. Similarly, EPA believes that gasoline sold in Alaska might be most appropriately evaluated using only the winter Complex Model, as is currently required.

scope of such a generally applicable provision would depend on many considerations, including environmental and economic impacts, industry practices, and the likely consequences for the RFG program in general. Some of the factors that EPA believes warrant additional consideration prior to the broad application of the provisions in today's action include:

(1) *Environmental impacts.* Many refiners which have Puerto Rico gasoline in their baseline aggregate that baseline with baselines of some or all of their other refineries. Currently, they may not actually produce gasoline for Puerto Rico, or may produce a reduced amount relative to their baseline volume of Puerto Rico gasoline. Thus, they may be taking advantage of Puerto Rico gasoline baseline emissions under the current regulations for the compliance of conventional gasoline produced for other locales. If required to re-evaluate the baseline of the Puerto Rico gasoline and to use the modified compliance baseline equation, the gasoline quality in either Puerto Rico or in the conventional or RFG areas of the continental U.S. may deteriorate relative to the current situation. EPA is also unable to evaluate the impact on the environment of the activities of refiners that have no Puerto Rico gasoline in their baseline but would choose to sell gasoline in Puerto Rico if such gasoline were allowed or required to be evaluated using the summer Complex Model. Since the summer Complex Model gives lower emissions for a given composition of gasoline, it would be advantageous for refiners to produce gasoline for Puerto Rico under such circumstances. However, because EPA is unable to anticipate the actions of such refiners (e.g., future gasoline production plans) it is currently impossible for the Agency to determine the overall environmental impacts that such a regulatory provision might have.

(2) *Economic impacts.* EPA expects today's action to have minimal economic consequences. Nonetheless, because of numerous uncertainties, EPA is unable to determine what economic impacts might result from a more general provision applicable to all areas not subject to the federal volatility standards. Specifically, possible reactions by refiners regarding aggregation and refinery changes would play a critical role in assessing the economic consequence of any such Agency action.

EPA understands that refinery aggregation decisions involve precise and costly evaluations, and that changing such decisions might entail

another round of concerted deliberation. Thus, while the direct economic impacts of such a broadly applicable provision might actually be small, a refiner's choice to re-evaluate its aggregation decisions might result in significant additional expense. Re-aggregation could not only be time-consuming and costly for the refiner, but could have anti-competitive effects for those refiners without applicable gasoline in their baseline. Thus, EPA's current lack of information regarding the impact that re-consideration of aggregation decisions might have on the RFG and anti-dumping programs is one reason we are limiting the applicability of today's action.

(3) *Disturbing the system.* With the exception of the problems addressed by today's action, the current system for implementing the RFG anti-dumping standards has been successful. Given the concerns discussed above, EPA is unsure whether it would be appropriate to disturb the current system for what may be minimal environmental benefit at potentially high economic costs.

IV. Public Participation

The Agency is publishing this action both as a proposed rulemaking and as a direct final rule because it views these modifications to the anti-dumping program as non-controversial and anticipates no adverse or critical comments. This action will be effective July 26, 1999 unless the Agency receives notice by July 9, 1999 that adverse or critical comments will be submitted. If such comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

V. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a "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.

EPA has 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. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires federal agencies 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 businesses, small not-for-profit enterprises, and small governmental jurisdictions. This rule will not have a significant impact on a substantial number of small entities because it involves an optional provision intended to promote successful implementation of the RFG anti-dumping requirements and to minimize existing adverse economic impacts. This action may, in fact, reduce the burden of the anti-dumping program on regulated entities. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Today's action does not involve the collection of information as defined by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Therefore, the provisions of that Act do not apply to this action.

D. Intergovernmental Relations

1. 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 action 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 by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. Before promulgation 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 requirement 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 rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The EPA has determined that today's rule does not include a Federal mandate because it imposes no enforceable duty on any State, local, and tribal governments, or the private sector. Today's rule implements an optional provision for evaluating the emissions of conventional gasoline sold by certain refiners in Puerto Rico. This action may, in fact, reduce the burden of the anti-dumping program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

2. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not

required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local, or tribal governments. The rule does not impose any mandatory duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

3. 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 13094 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule applies exclusively to refiners that sell gasoline in Puerto Rico.

The rule does not create any mandates or impose any obligations, 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.

E. 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), directs the EPA to use voluntary consensus standards (VCS) 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, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA is not requiring the use of any voluntary consensus standards.

F. Congressional Review Act

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. 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**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that 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 E.O. 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 E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. Additionally, this rule is not subject to E.O. 13045 because it implements specific standards established by Congress in statutes.

VI. Statutory Provisions and Legal Authority

The statutory authority for today's actions is granted to EPA by sections 114, 211 (c) and (k) and 301 of the Clean Air Act, as amended; 42 U.S.C. 7414, 7545 (c) and (k), and 7601.

List of Subjects in 40 CFR Part 80

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

Dated: May 28, 1999.

Carol M. Browner,
Administrator.

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

PART 80—REGULATION OF FUEL AND FUEL ADDITIVES

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

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

2. A new paragraph (d) is added to Section 80.93 to read as follows:

§ 80.93 Individual baseline submission and approval.

* * * * *

(d) Requirements for petition applicable to Puerto Rico gasoline.

(1) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its individual baseline may petition EPA to use the summer Complex Model to evaluate its Puerto Rico and Virgin Islands gasoline for compliance under § 80.101.

(2) The petition must be sent to: U.S. EPA, Fuels and Energy Division, 2000 Traverwood, Ann Arbor, MI 48105.

(3) The petition must include the following:

- (i) Identification of the refinery;
- (ii) Identification of contact person;
- (iii) A revised individual baseline determination, wherein the baseline

Puerto Rico and U.S. Virgin Islands gasoline has been evaluated using the summer Complex Model. The calculations should be clearly and fully described and displayed.

(iv) Baseline auditor agreement with the revised baseline.

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

3. Section 80.101 is amended by revising paragraphs (f)(4) and (g)(1)(ii) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(f) * * *

(4)(i) [Reserved].

(ii) [Reserved].

(iii) Any refiner or importer with Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its individual baseline and which has met the requirements specified in paragraph (g)(1)(ii)(B) of this section, and whose total volume of conventional gasoline, RBOB, reformulated gasoline, and California gasoline, as defined in § 80.81(a)(2), produced or imported by the refiner or importer during the averaging period is greater than that refiner's or importer's 1990 baseline volume as determined under § 80.91(f)(1), must calculate the compliance baseline for each parameter or emissions performance according to the following formula:

$$CB_i = \left(B_i * \left(\frac{V_{1990} - V_{1990s}}{V_a} \right) \right) + \left(BS_i * \left(\frac{V_{1990s}}{V_a} \right) \right) + \left(DBA_i * \left(1 - \frac{V_{1990}}{V_a} \right) * \left(1 - \frac{V_{as}}{V_a} \right) \right) + \left(DBS_i * \left(1 - \frac{V_{1990}}{V_a} \right) * \left(\frac{V_{as}}{V_a} \right) \right)$$

where:

CB_i = the compliance baseline value for emissions performance i

B_i = the refiner's or importer's individual annual baseline for emissions performance i under § 80.91 for gasoline supplied to areas subject to volatility standards under § 80.27

BS_i = the refiner's or importer's individual baseline as determined under § 80.91 using the summer Complex Model, for gasoline supplied to Puerto Rico and the U.S. Virgin Islands, for emissions performance i

DBA_i = annual anti-dumping statutory baseline value for emissions performance i under § 80.91(c)(5)(iv)

DBS_i = the summer statutory baseline value for emissions performance i under § 80.45(b)(3), table 5
 V_a = total volume of RFG, conventional gasoline, RBOB, oxygenates and California gasoline as defined under § 80.81(a)(2) produced or imported during the averaging period

V_{1990} = 1990 baseline volume under § 80.91(f)(1)

V_{1990s} = 1990 baseline volume of gasoline supplied to Puerto Rico and the U.S. Virgin Islands
 V_{as} = volume of conventional gasoline supplied during the averaging period to Puerto Rico and the U.S. Virgin Islands

i = exhaust toxics or NO_x emissions performance

(g) * * *

(1) * * *

(ii) Complex Model calculations.

(A) Exhaust benzene, exhaust toxics, and exhaust NO_x emissions performance for each batch shall be calculated in accordance with the applicable model under § 80.45.

(B) A refiner which has Puerto Rico gasoline, or Puerto Rico and U.S. Virgin Islands gasoline, in its baseline shall use the summer Complex Model to evaluate its averaging period Puerto Rico and U.S. Virgin Islands gasoline provided it has petitioned the Agency, per § 80.93(d), and has received Agency approval on the petition, and has revised its individual baseline, such that the Puerto Rico and U.S. Virgin Islands gasoline in its individual baseline has

been evaluated using the summer Complex Model.

* * * * *

[FR Doc. 99-14475 Filed 6-8-99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[FRL-6344-4]

Identification of Additional Ozone Areas Attaining the 1-Hour Standard and to Which the 1-Hour Standard is No Longer Applicable

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 17, 1998, the EPA published a proposal to identify ten additional ozone areas where the 1-hour standard is no longer applicable. The 30-day comment period ended on January 19, 1999. A total of six comment letters were received in response to the proposal. This final rule summarizes the comments, includes responses, and finalizes the determination that the 1-hour standard no longer applies for ten additional areas identified in this final rule. Furthermore, today's final rule stops any sanctions or Federal implementation plan (FIP) clocks that may have been started in these ten areas and that related to the planning requirements of section 182. With finalization of this rule, the Code of Federal Regulations (CFR) is amended to reflect such changes. On July 18, 1997, EPA provided by rule that the 1-hour ozone standard would no longer apply to an area based on an EPA determination that the area has attained that standard. Since the 1-hour standard no longer applies to these areas, designations for that standard also no longer apply. The 1-hour standard and designations for that standard will continue to apply to areas for which EPA has not made a determination through rulemaking. The EPA has promulgated final rules regarding the applicability of the 1-hour standard for other areas on June 5, 1998 and July 22, 1998. The ten additional areas identified in today's final rule where EPA has determined the 1-hour standard no longer applies, based on the most recent air quality data available from 1996-1998, are: Boston-Lawrence-Worcester (E.MA), Massachusetts-New Hampshire; Memphis, Tennessee; Muskegon, Michigan; Portland, Maine; Portsmouth-Dover-Rochester, New Hampshire; Providence (All RI), Rhode Island;

Allegan County, Michigan; Oceana County, Michigan; Mason County, Michigan; Door County, Wisconsin.

EFFECTIVE DATE: This action will be effective June 9, 1999.

ADDRESSES: Copies of the public comments and EPA's responses are available for inspection at the following address: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A-98-48, U.S.

Environmental Protection Agency, 401 M Street SW, Room M-1500, Washington, DC 20460, telephone (202) 260-7548, between 8:00 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Questions concerning this final rule should be addressed to Annie Nikbakht (policy) or Barry Gilbert (air quality data), Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Ozone Policy and Strategies Group, MD-15, Research Triangle Park, NC 27711, telephone (919) 541-5246/5238. In addition, the following Regional contacts may be called for individual information regarding monitoring data and policy matters specific for each Regional Office's geographic area:

Region I—Richard P. Burkhardt, (617) 918-1664

Region IV—Kay Prince, (404) 562-9026

Region V—Todd Nettesheim, (312) 353-9153.

SUPPLEMENTARY INFORMATION: *Electronic Availability*—The official record for this final rule, as well as the public version, has been established under docket number A-98-48 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as confidential business information, is available for inspection from 8:00 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays. The official final rulemaking record is located at the address in **ADDRESSES** at the beginning of this document.

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I. Background

On July 16, 1997, President Clinton issued a memorandum (62 FR 38421, July 18, 1997) to the Administrator of the EPA which indicates that within 90 days of promulgation of the new 8-hour standard, the EPA will publish an action identifying ozone areas to which the 1-hour standard will cease to apply. The memorandum states that for areas where the air quality does not currently attain the 1-hour standard, the 1-hour standard will continue in effect. The provisions of subpart 2 of title I of the Clean Air Act (Act) would also apply to currently designated nonattainment areas until such time as each area has air quality meeting the 1-hour standard.

On July 18, 1997 (62 FR 38856), EPA promulgated a regulation replacing the 1-hour ozone standard with an 8-hour standard at a level of 0.08 parts per million (ppm). The form of the 8-hour standard is based on the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area. The new primary standard, which became effective on September 16, 1997, will provide increased protection to the public, especially children and other at-risk populations. On July 18, 1997, EPA also promulgated regulations providing that revocation of the 1-hour ozone national ambient air quality standard (NAAQS) would occur on an area-by-area basis when EPA determined that an area was meeting the 1-hour NAAQS. This was done in order to facilitate continuity in public health protection during the transition to the new NAAQS.

Therefore, on January 16, 1998, in accordance with the President's memorandum and the regulations promulgated on July 18, 1997, the Agency issued a direct final rule (63 FR 2726) which identified ozone areas to which the 1-hour standard will cease to apply because they have not measured a current violation of the 1-hour standard. For all other areas, the 1-hour standard will continue to apply. However, due to the receipt of adverse comments, the direct final action was withdrawn on March 16, 1998 (63 FR