

that meets or exceeds the NO_x statutory baseline standard.

III. Today's Action

A. Maximum Duration of Alternative Compliance Periods for Small Refiners

This direct final rule will allow small start-up refiners to request an alternative compliance period under § 80.101(k) of up to seven years, so long as that period does not extend beyond December 31, 2007. As with all applications for alternative anti-dumping compliance periods, the Administrator will act upon the petition within six months. EPA believes that this change is appropriate for the reasons outlined below.

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

The existing regulations regarding alternative anti-dumping compliance periods make no distinctions based on refinery size. However, small refiners starting up a new refinery may face

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

However, if a refiner is a small refiner under the Tier 2 gasoline sulfur regulation, then full compliance with the regulations is not required until January 1, 2008.⁶ Thus, an alternative anti-dumping compliance period extending beyond calendar year 2005 may prove beneficial for a small refiner, and also is consistent with EPA intent to encourage early reductions in sulfur content. For example, small refiners may face particular hardship in raising capital and bringing new refinery units on line, including de-sulfurization equipment. In fact, one small refiner with an approved alternative compliance period believes that it will have difficulty complying within the five year maximum period under § 80.101(k), and believes that a longer compliance period would be appropriate. The existing regulations for alternative anti-dumping compliance periods at § 80.101(k) contain no provision for a compliance period that exceeds five years or that extends beyond January 1, 2006. However, we believe that it is appropriate to allow small refiners to petition for an alternative anti-dumping compliance period of up to seven years, as long as the compliance period does not extend beyond calendar year 2007 (when small

refiners generally will have to meet the Tier 2 sulfur requirements). This approach would provide additional flexibility to small start-up refineries. Additionally, it would be extremely difficult for a refinery to generate the NO_x benefits necessary to compensate for the cumulative NO_x deficits generated during its alternative compliance period without implementing sulfur-reducing technologies as soon as possible and producing low sulfur gasoline earlier than otherwise required. Therefore, even with an alternative period extending through 2007, we believe that we would realize the intended benefits of early sulfur reductions.

For any new alternative compliance period petitions, in order for a refinery to receive an alternative compliance period that exceeds five years or that extends beyond calendar year 2005, the refiner must demonstrate that it is a "small refiner" for purposes of EPA's Tier 2 low sulfur gasoline regulations⁷ and explain the conditions that justify the alternative compliance period requested. For a refinery that already has an alternative anti-dumping compliance period, and that wants to extend its compliance period beyond five years or calendar year 2005, the refiner must submit a petition describing the hardships that make a longer alternative anti-dumping compliance period appropriate and demonstrating that it is a small refiner. Specifically, any refiner requesting an alternative compliance period of more than five years, or extending beyond calendar year 2005, must include all information required under § 80.101(k)(2), appropriately updated to reflect current conditions. Such a refiner must include a clear explanation as to the hardship that makes it infeasible for it, as a small refiner, to meet the applicable milestones and standards within five years or by January 1, 2006, whichever comes first. The refiner must show that it has received approval as a small refiner under the Tier 2 gasoline sulfur regulations and that the conditions of that approval are still applicable. The application must be submitted by no later than January 1, 2004. We chose this date since it permits reasonable time after promulgation of this regulation for a refiner to apply for the flexibility, while ensuring that timely decisions are made to produce sufficient clean gasoline for compliance purposes. The Administrator will act on the application within six months of receipt and will issue an approval or

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

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

⁷ See 40 CFR 80.225–80.235.

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

⁴ *Id.* at 54425.