

disapproval, in writing, including any conditions or other requirements to which the approval is subject.

If EPA determines that the circumstances described in a petition warrant an extended compliance period, we may grant a refinery an alternative compliance period of up to seven years total, so long as the alternative period does not extend beyond calendar year 2007. If EPA grants an alternative anti-dumping compliance period of more than five years, or extending beyond calendar year 2005, EPA's approval will provide for appropriate milestones and other requirements. If EPA approves an extension to an existing alternative compliance period, we will adjust the compliance dates and other requirements as appropriate to reflect the new alternative compliance period.

If EPA finds that a refiner has provided false or misleading information in connection with any application relating to an alternative anti-dumping compliance period, we will notify the refiner that its application and any alternative compliance period that relies on such application is void *ab initio*.

If a refiner's status changes at any time during an alternative anti-dumping compliance period and the refiner is no longer eligible for the small refiner hardship provisions of the Tier 2 gasoline rule, then any refineries owned or operated by such refiner will no longer be eligible for an alternative anti-dumping compliance period that extends longer than five years or beyond calendar year 2005.⁸ Any change in a refinery's alternative compliance period eligibility will become effective with the first full annual averaging period following the refiner's loss of small refiner status. The refinery is required to notify EPA immediately of any change in small refiner status under the Tier 2 gasoline regulation.⁹

For any refinery with an alternative compliance period that exceeds five years, EPA will require the refinery to provide additional NO_x benefits (above and beyond those benefits required to provide a double payback of cumulative NO_x deficits) if the refinery has any cumulative NO_x deficits remaining at the termination of the fifth or sixth years of its alternative compliance period. As discussed in the September 8, 2000, action, we believe that a one year compliance period should be the norm, even though alternative anti-dumping compliance periods of up to five years may be appropriate in limited circumstances. We continue to believe

that the shortest, appropriate compliance period is the correct one and we want to minimize any potential for short-term or long-term environmental detriment. We want to encourage refiners to meet the anti-dumping statutory baseline NO_x standard, on average, for all of their gasoline as soon as possible. Any refinery that is granted an alternative anti-dumping compliance period of up to five years must produce a net NO_x benefit by the end of the applicable period. In the case of a small refinery with an alternative compliance period of more than five years, we believe it is reasonable to require the refinery to provide additional NO_x benefits if the refinery has not made substantial gains by the end of the fifth year of the compliance period, because such requirement will provide a deterrent against delays in the production of cleaner gasoline. Moreover, this requirement functions to minimize the potential for any environmental harm that might occur in the event that a refinery fails to meet its obligations under its alternative anti-dumping compliance period. The longer a refinery's alternative compliance period, the greater the potential for a refinery to generate a large NO_x deficit, and the greater the potential risk to the environment if the refiner cannot meet its obligations. Thus, for an extended alternative compliance period, when a refinery carries NO_x deficits too late into its compliance period, it is appropriate for EPA to impose prophylactic requirements in the form of additional NO_x benefit obligations.

For every ton of NO_x deficit remaining upon the expiration of the fifth year of any alternative anti-dumping compliance period, the small refiner will be required to provide an additional 1/2-ton of NO_x benefit by the end of the alternative compliance period. These additional NO_x benefits are in addition to all other requirements of § 80.101(k). Similarly, for every ton of NO_x deficit remaining upon the expiration of the sixth year of any alternative compliance period, the refiner will be required to provide an additional 1-ton of NO_x benefit by the end of alternative compliance period. These additional tons of NO_x benefit may come from actual emissions benefits from gasoline that the refinery produces, or from the purchase and retirement of marketable NO_x allowances or credits as discussed earlier in this notice.

B. Using NO_x Credits or Allowances to Satisfy Double Payback Provisions

Today's direct final rule will allow refiners to purchase and retire marketable stationary source NO_x allowances or credits in order to satisfy the requirements for up to one-half of the total NO_x payback under § 80.101(k)(2). However, a refinery must compensate for the entire cumulative NO_x deficit that it generates over the alternative compliance period by producing NO_x benefits from gasoline that the refinery actually produces before the end of the alternative compliance period (measured in tons of NO_x).

Existing § 80.101(k) requires refiners both to compensate for all NO_x deficits generated during the alternative compliance period, and to generate additional NO_x benefits before the end of the alternative compliance period. Accordingly, half of the total NO_x payback represents repayment for "dirtier" gasoline produced earlier in the compliance period. The second half of the NO_x payback (beyond the break-even point) represents a precautionary surplus environmental benefit. Currently, all NO_x benefits must come from cleaner gasoline that the refinery actually produces. However, we believe it is appropriate to permit this surplus benefit to be paid in terms of either actual emission reductions from gasoline that the refinery produces, or from the purchase and retirement of marketable NO_x allowances or credits. This will allow additional flexibility for the refiner to invest in and develop infrastructure at the refinery, including infrastructure needed to comply with the Tier 2 gasoline sulfur requirements early. In order to pay back the actual NO_x deficit created in the earlier part of an alternative anti-dumping compliance period, a refinery would have to begin producing adequate quantities of low sulfur/low NO_x gasoline to meet its multi-year average compliance obligations by the end of the applicable alternative compliance period. Discussions with an affected refiner have confirmed this understanding.

To provide for NO_x benefits by way of NO_x credits or allowances, a refiner would have to appropriately retire NO_x credits or allowances on a timely basis. A refiner may acquire stationary source NO_x credits or allowances for purposes of satisfying up to half of its total NO_x repayment obligations under § 80.101(k)(2) from any of several state stationary source programs covered by an approved state implementation plan (SIP), such as the Ozone Transport Commission (OTC) NO_x Budget

⁸ See 40 CFR 80.230.

⁹ See 40 CFR 80.230(b).