

** Standard Industry Classification System Code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists all entities that we are now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated by this action. To determine whether your business is regulated by this action, you should carefully examine the applicability criteria in part 80 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section of this document.

II. Background

The Clean Air Act requires EPA to establish rules for reformulated gasoline (RFG) designed to reduce vehicle emissions of ozone-forming volatile organic compounds (VOCs) and toxic air pollutants. The Act requires refiners, importers, and blenders to sell only reformulated gasoline in specific "covered areas" with the worst ozone problems. Other areas with ozone levels exceeding the public health standard have voluntarily chosen to become RFG covered areas. Additionally, the Act required us to establish regulations covering all gasoline that is not reformulated. Such gasoline is called conventional gasoline, and the standards governing it are called the anti-dumping standards. We issued final reformulated gasoline and anti-dumping regulations on December 15, 1993¹ and the standards in those regulations became effective in January 1995.

The purpose of the anti-dumping standards is to ensure that the quality of a refiner's conventional gasoline does not get worse once the reformulated gasoline program begins. To ensure that this does not happen, the Act requires that each refiner's conventional gasoline be at least as clean as the gasoline produced by that refiner during the "baseline" year 1990. The anti-dumping program specifically governs the exhaust toxics and NO_x emissions of conventional gasoline. These emissions are determined using the Complex Model, a tool which uses the fuel content specifications, or parameters, of a gasoline blend to calculate the emissions associated with that gasoline. The fuel parameters included in the

Complex Model are aromatics, olefins, benzene, sulfur, oxygen content and oxygenate type, the percent of fuel evaporated at 200°F and 300°F (E200 and E300, respectively) and Reid vapor pressure ("RVP").

Under the anti-dumping program, each refinery and importer has an individual baseline consisting of a set of values for the Complex Model fuel parameters and the exhaust toxics and NO_x emissions associated with those values representing the emissions performance of the gasoline that the refiner produced in 1990. An individual baseline can be one of two types. The first type is the unique individual baseline. A refinery or importer has a unique individual baseline if it was in operation for at least 6 months in 1990 and had sufficient data and supporting analysis to determine the actual quality of its 1990 gasoline to EPA's satisfaction. Those with unique individual baselines also have an associated individual baseline volume, which is the volume of gasoline produced or imported by that refiner in 1990. The other type of individual baseline is the statutory baseline. The statutory baseline consists of a set of fixed values for the Complex Model fuel parameters and the emissions associated with those values which represent the average quality of all gasoline produced or sold in the United States in 1990. The summer portion of the statutory baseline was specified in the Clean Air Act; the corresponding winter portion was developed by EPA. Together, the summer and winter portions form the annual average statutory baseline which is specified in 40 CFR 80.91(c)(5). There is no individual baseline volume for those refineries or importers for whom the statutory baseline is the individual baseline.

Compliance with the anti-dumping requirements is generally determined on an annual basis. Each batch of gasoline is evaluated under the appropriate summer or winter portion of the Complex Model; the resulting emissions calculated for each batch are volume-weighted to determine the annual average exhaust toxics and NO_x emissions for the refinery or importer. Then, the annual average emissions are compared to the applicable baseline emissions values to determine whether the refinery or importer is in or out of compliance with its anti-dumping standards.

Section 211(k)(8)(D) of the Act directs us to establish "an appropriate compliance period or compliance

periods" to be used for assessing compliance with the anti-dumping regulations. As mentioned above, a one year compliance period is the norm. However, on September 8, 2000 we published a rule that allows a refiner to apply for an alternative compliance period under 40 CFR 80.101(k) for a start-up refinery.² To receive an alternative anti-dumping compliance period the refiner must show that it is starting up a refinery that will produce conventional gasoline and that it faces significant hardship in meeting the anti-dumping statutory baseline NO_x standard. EPA may approve an alternative compliance period for any domestic or foreign refiner that meets these conditions. If EPA approves the application, we may establish a compliance period of two, three, four, or five years. Under § 80.101(k)(6)(iv), no compliance period may exceed five years or extend beyond January 1, 2006. This date was picked because it represented the deadline for Tier 2 gasoline sulfur standards for most refiners. When EPA approves an alternative compliance period it also establishes milestones that require the refinery to begin meeting the annual statutory baseline by a specified date. Moreover, the refinery must produce gasoline by the end of the alternative compliance period that generates NO_x emissions benefits that are equal to double the cumulative NO_x deficit that the refinery generates during the alternative compliance period. Under the existing regulations, NO_x emission benefits may only be generated by gasoline that is produced by the refiner and that over-complies with the annual NO_x baseline standard. The refinery must also bank stationary source NO_x credits or allowances equivalent to the NO_x deficit it generates on a quarterly basis until it begins to produce gasoline that meets or exceeds the NO_x statutory baseline standard.

III. Today's Proposed Action

A. Maximum Duration of Alternative Compliance Periods for Small Refiners

This proposed rule would 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

¹ "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Final Rule," 59 FR 7812 (February 16, 1994). See 40 CFR part 80, subparts D, E, and F.

² For more information, see "Establishment of Alternative Compliance Periods under the Anti-Dumping Program"—Direct Final Rule, 65 FR 54423 (September 8, 2000).