

approved refiners to have the anti-dumping statutory baseline exhaust toxics emissions values specified at § 80.91(c)(5) as their anti-dumping standard. As discussed above, the alternative anti-dumping averaging regulations were finalized on September 8, 2000, and apply to refiners which had never produced gasoline subject to the anti-dumping requirements. Thus, a refiner approved for an alternative anti-dumping averaging period would not meet the 12 month requirement for establishing an individual MSAT baseline, and would be subject to the MSAT default baseline values at § 80.855(b)(1). The conventional gasoline MSAT default baseline toxics performance value of approximately 94 mg/mile is a more stringent standard than the anti-dumping statutory baseline value of approximately 104 mg/mile.

The intent of the alternative averaging period provisions is to provide additional flexibility to approved refiners during the start-up of a refinery. The September 8, 2000, rule specifically excluded a start-up refinery's inability to meet its anti-dumping toxics standard as cause to petition for an alternative averaging period because the refinery units which impact benzene and aromatics (the primary fuel components affecting toxics performance) are different than those used to reduce sulfur (which leads to reduced NO<sub>x</sub> emissions). However, in that rule, EPA also required petitioning refiners to include a detailed description of the current and future state of the refinery equipment (processing units). During the course of adding refinery processing units and bringing them up to normal operational levels, gasoline quality can fluctuate significantly. The operational levels and throughput of the processing units is dependent on the target standard(s). Refinery process units produce a variety of blendstocks which have a wide range of properties. Some blendstocks are higher in sulfur or olefins, fuel parameters which significantly affect NO<sub>x</sub> emissions. Other blendstocks are higher in benzene and aromatics, two fuel parameters which contribute significantly to toxics performance as determined by the Complex Model. If a processing unit which produces a blendstock stream high in benzene or aromatics is put into operation first, toxics levels would be expected to be higher than when the gasoline is composed of many blendstocks, including those blendstocks with low benzene and aromatics levels which will dilute the high benzene and aromatics

blendstocks' effect on toxics performance.

Because of the variations in gasoline fuel quality that can occur during startup (as streams are added and then brought to normal operational levels), EPA believes that some start-up refineries may not be able to achieve the MSAT default baseline toxics performance, and that it may be appropriate for EPA to allow a refiner with an approved alternative anti-dumping averaging period to comply with the less stringent anti-dumping statutory baseline value as its conventional gasoline MSAT standard for some or all of its alternative averaging period. We propose to require that the refiner petition EPA for approval to use the anti-dumping statutory baseline value as its MSAT compliance baseline for a limited period of time not to exceed its alternative anti-dumping period. The refiner would have to specify the cost and/or technological constraints that make it infeasible for the refinery to achieve compliance with the MSAT compliance baseline value specified in § 80.855(b), and the expected time-line for achieving compliance with that requirement (including achievable incremental improvements in toxics performance). We propose that, when EPA approves a refiner's petition, it will establish a date by which the refinery must comply with the MSAT default baseline. Upon expiration of the period during which the refinery may use the anti-dumping statutory baseline toxics value as its MSAT compliance baseline, the refinery would be subject to the MSAT compliance baseline value specified at § 80.855(b). We believe that requiring the refiner to specify its technological and cost constraints, and basing the approval of such a petition on that information, is consistent with the Clean Air Act requirement at 202(l)(2).

#### *E. Effects of Today's Proposed Rule*

The environmental effects of today's proposed rule would be minimal, as only one refinery has received an approved alternative anti-dumping averaging period so far. No new refineries have been constructed since 1997, and only five refineries have been reactivated since 1997.

The economic effects of today's action are likely to be positive, on a small, local scale. Refinery start-up, with a less stringent toxics standard, would be able to proceed more quickly. Additionally, the cost of complying with a more stringent standard would not be imposed, and thus would not be passed on to consumers.

## **IV. Administrative Requirements**

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the 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 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.

This proposed rule is not a significant regulatory action within the meaning of the Executive Order. It would not have an annual effect on the economy of \$100 million or more and it is not expected to have any adverse economic effects as described in the Order. This proposed rule does not raise issues of consistency with the actions taken or planned by other agencies, will not materially alter the cited budgetary impacts, and does not raise any novel legal or policy issues as defined in the Order.

### *B. Paperwork Reduction Act*

This proposed rule would not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Today's proposed rule would only permit more flexibility to parties under an existing petitioning process for anti-dumping. OMB has approved the information collection requirements contained in the final reformulated gasoline (RFG) and anti-dumping rulemaking and has assigned OMB control number 2060-0277. To the extent that this rule affects the MSAT provisions, the OMB control number for the information requirements will be listed in an amendment to 40 CFR part 9 in a subsequent **Federal Register** document after OMB approves the ICR. The information requirements are not enforceable until OMB approves them.