cleaning requirements of paragraph (g)(3)(iii) or (h)(2)(i) of this section, the owner or operator shall comply with the following requirements.

* * * * *

(x) If an air knife system is used to comply with the continuous web cleaning requirements of paragraph (g)(3)(iii) or (h)(2)(i) of this section, the owner or operator shall comply with the following requirements.

* * * * *

(xi) If a combination squeegee and air knife system is used to comply with the continuous web cleaning requirements of paragraph (g)(3)(iii) or (h)(2)(i) of this section, the owner or operator shall comply with the following requirements.

* * * * *

(g) * * *

(3) * * *

(iv) Each vapor cleaning machine shall be equipped with a device that shuts off the sump heat if the sump liquid solvent level drops to the sump heater coils. This requirement does not apply to a vapor cleaning machine that uses steam to heat the solvent.

* * * * *

(vii) Each cleaning machine that uses a lip exhaust or any other exhaust within the solvent cleaning machine shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber that meets the requirements of either paragraph (e)(2)(vii) or (g)(2) of this section.

* * * * *

(h) * * *

(2) * * *

(v) Each cleaning machine that uses a lip exhaust or any other exhaust within the solvent cleaning machine shall be designed and operated to route all collected solvent vapors through a properly operated and maintained carbon adsorber that meets the requirements of either paragraph (e)(2)(vii) or (g)(2) of this section.

* * * * *

3. Section 63.464 is amended by revising paragraph (d) to read as follows:

§ 63.464 Alternative standards.

* * * * *

(d) As an alternative to meeting the requirements in § 63.463, each owner or operator of a continuous web cleaning machine can demonstrate an overall cleaning system control efficiency of 70 percent or greater using the procedures in § 63.465(g). This demonstration can be made for either a single cleaning machine or for a solvent cleaning system that contains one or more cleaning machines and ancillary equipment, such as storage tanks and distillation units. If the demonstration is made for a cleaning system, the facility must identify any modifications required to the procedures in § 63.465(g) and they must be approved by the Administrator.

4. Section 63.465 is amended by revising paragraph (b) and (h)(1) to read as follows:

§ 63.465 Test methods.

* * * * *

(b) Except as provided in paragraph (g) of this section for continuous web cleaning machines, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.464 shall, on the first operating day of every month ensure that the solvent cleaning machine system contains only clean liquid solvent. This includes, but is not limited to, fresh unused solvent, recycled solvent, and used solvent that has been cleaned of soils. A fill line must be indicated during the first month the measurements are made. The solvent level within the machine must be returned to the same fill-line each month, immediately prior to calculating monthly emissions as specified in paragraph (c) of this section. The solvent cleaning machine does not have to be emptied and filled with fresh unused solvent prior to the calculations.

* * * * *

(h) * * *

(1) Using the records of all solvent additions, solvent deletions, and solvent recovered from the carbon adsorption system for the previous monthly reporting period required under § 63.467(e), determine the overall cleaning system control efficiency (E_o) using Equation 8 of this section as follows:

$$E_o = R_i / (R_i + Sa_i - SSR_i) \qquad \text{(Eq. 8)}$$

Where:

E_o = overall cleaning system control efficiency.

R_i = the total amount of halogenated HAP liquid solvent recovered from the carbon adsorption system and recycled to the solvent cleaning system during the most recent monthly reporting period, i, (kilograms of solvent per month).

Sa_i = the total amount of halogenated HAP liquid solvent added to the solvent cleaning system during the most recent monthly reporting period, i, (kilograms of solvent per month).

SSR_i = the total amount of halogenated HAP solvent removed from the solvent cleaning system in solid waste, obtained as described in paragraph (c)(2) of this section, during the most recent monthly reporting period, i, (kilograms of solvent per month).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6864–8]

Establishment of Alternative Compliance Periods Under the Anti-Dumping Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Clean Air Act as amended in 1990 (''the Act'') directs the Environmental Protection Agency (''EPA'' or ''we'') to issue regulations requiring reformulated gasoline for major metropolitan areas with the worst ozone air pollution problems. Other areas with ozone levels exceeding the public health standards may voluntarily choose to participate in the federal reformulated gasoline program. In order to ensure that the ''dirtier'' components of reformulated gasoline are not dumped into gasoline sold in areas not participating in the reformulated gasoline program (''conventional gasoline'' areas), the Act requires EPA to ensure that the quality of conventional gasoline does not fall below 1990 levels. The Act also mandates that we establish an appropriate compliance period or compliance periods associated with meeting the anti-dumping standards. Under the existing regulations for reformulated gasoline and anti-dumping, the compliance period is one year. However, we believe that in certain limited circumstances a longer conventional gasoline anti-dumping may be appropriate on a temporary basis. Such an alternative compliance period is only appropriate for a refiner who produces conventional gasoline and who is starting up a refinery and facing significant hardship in complying with the anti-dumping statutory baseline NO_X standard. Moreover, we believe that it is appropriate for any refinery subject to an alternative compliance period to meet additional substantive and administrative requirements to ensure that there is no environmental detriment as a result of the longer averaging period. This direct final rule sets forth procedures for

establishing alternative compliance periods under the anti-dumping program and the standards applicable to refineries operating under such compliance periods.

DATES: This direct final rule is effective October 23, 2000, unless we receive adverse comments or a request for a public hearing by October 10, 2000. If the Agency receives adverse comment or a request for public hearing by October 10, 2000, we will withdraw this direct final rule by publishing a timely withdrawal in the **Federal Register**.

ADDRESSES: If you wish to submit comments or request a public hearing, you should send any written materials to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW (6406J), Washington, DC 20460, (202) 564–8987. Materials relevant to this direct final rule have been placed in docket A–2000–27 located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. You may be charged a reasonable fee for photocopying services.

FOR FURTHER INFORMATION CONTACT: If you would like further information about this rule or to request a hearing, contact Anne Pastorkovich, Attorney/Advisor, Transportation & Regional Programs Division, (202) 564–8987.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

Entities potentially regulated by the action are parties that produce conventional gasoline. Regulated categories and entities include:

Category	Examples
Industry	Gasoline refiners.

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

This section summarizes the anti-dumping program. Since refiners who request flexibility under today's rule are likely to elect to use sulfur-reducing technologies early in order to meet production requirements under this rule, a brief overview of the Tier 2 gasoline program is included as well.

The Anti-Dumping Program

The Clean Air Act required EPA to establish rules for reformulated gasoline (RFG) designed to result in significant reductions in vehicle emissions of ozone-forming and toxic air pollutants. Reformulated gasoline is required to be used in specific metropolitan areas with the worst ozone problems. Several other areas with ozone levels exceeding the public health standard have voluntarily chosen to use RFG. 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, 1993 [1] and the standards in those regulations became effective in January 1995.

The purpose of 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 a specific ''baseline'' year. The baseline reference year specified in the Act is 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 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, or 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 specification 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 Part 80.91(c)(5). There is no individual baseline volume for those refineries or importers for which the statutory baseline is the individual baseline.

Compliance with the anti-dumping requirements is 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 batch are volume-weighted to determine the annual average exhaust toxics and NO_X emissions for the refinery or importer. The resulting annual average emissions are compared to the 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, we have established a one year compliance period for anti-dumping. A one year compliance period is consistent with other fuels programs utilizing averaging and annual reporting, including the RFG program. Generally, a one year compliance period is desirable because it provides an effective monitoring period for environmental purposes while permitting flexibility with respect

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

to averaging over the calendar year. A one year period gives more assurance that gross violations will not occur before the violation is discovered and appropriate action is taken and that those responsible for the violation are held accountable. A one year period prevents a company from violating for several years, generating a long-term environmental detriment, and then going out of business before it can be held accountable. A one year period is also simple for compliance accounting purposes. Although we chose the one year compliance period for the reasons just mentioned, we recognize that the Act permits us to establish alternative anti-dumping compliance periods by regulation.

Tier 2 Gasoline

Since the passage of the 1990 Clean Air Act Amendments, the U.S. has made significant progress in reducing emissions from passenger cars and light trucks through implementation of programs like RFG and anti-dumping. Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light duty trucks will continue to be significant contributors to air pollution. In light of this trend and to build upon programs aimed at reducing emissions from motor vehicles and motor vehicle fuels, EPA recently issued regulations establishing lower sulfur content for all gasoline [2] (*i.e.*, ''Tier 2 gasoline'') and establishing stricter tailpipe emissions standards for all passenger vehicles, including sport utility vehicles (SUVs), minivans, and vans and pick-up trucks under 8,500 lbs. The Tier 2 program will also reduce ozone and particulate matter (PM) pollution. Gasoline sulfur levels significantly affect NO_X emissions. Since NO_X emissions are ozone precursors, a reduction in the sulfur level of gasoline will reduce ozone pollution. The level of gasoline sulfur control required under the Tier 2 program will also benefit the environment by directly reducing emissions of sulfur compounds.

The Tier 2 gasoline standards will be fully implemented by 2006 by all refiners except for those subject to geographic phase-in area (GPA) requirements, who have until 2007, and certain other qualifying refiners, who have until 2008. (If a hardship extension is granted, an individual refiner may have until 2010 to meet the final standards.) The Tier 2 program is structured to permit averaging in order to meet the sulfur standard, with an average sulfur content standard of 30 ppm and a per gallon sulfur limit of 80 ppm by the date of full implementation. Benefits from the Tier 2 gasoline program may be seen more immediately, as some refiners are expected to start lowering sulfur levels as early as this year. Those who lead the way in reducing sulfur earlier than required may generate marketable credits or allotments. As with the RFG and anti-dumping programs, compliance is demonstrated based upon a one year compliance period.

III. Today's Action

Need for and Purpose of Today's Action

As discussed above, section 211(k)(8)(D) of the Act directs EPA to establish an appropriate compliance period or compliance periods for the purpose of assessing compliance with anti-dumping requirements. At the present time, the only compliance period that has been established for anti-dumping is a one year compliance period. The one year compliance period is consistent with the one year period established under other existing fuels programs and, at the time the anti-dumping regulations were developed, there was no compelling reason or identified benefit to specifying any alternative compliance period.

We believe that achieving the Tier 2 gasoline sulfur reductions, at the refinery level, as soon as possible is an extremely valuable mechanism for reducing vehicle emissions, perhaps more so than any other recently promulgated gasoline regulation. We are also aware of at least one refinery in a start-up mode which would be able to achieve the applicable Tier 2 gasoline sulfur reductions earlier than required, but would not be able to comply with its anti-dumping standard, which is the statutory baseline, in early production years. In order to comply with its anti-dumping standard, the refiner would have to delay the start-up process and significantly delay the time frame in which it could produce gasoline meeting the Tier 2 gasoline sulfur standards.

Because we believe that achieving the Tier 2 gasoline sulfur levels is critical to reducing ozone levels by reducing emissions of the ozone precursor NO_X (see the discussion in ''Summary of Today's Action'' below), we believe it is appropriate to allow an alternative anti-dumping compliance period for a refinery in start-up mode, provided that the refiner can show that the refinery will achieve the Tier 2 gasoline sulfur levels earlier than otherwise required. At the same time, we want to ensure that no environmental detriment occurs as a result of the flexibility we are providing, and have included other requirements the refinery must meet which will provide the appropriate environmental protection. The details of the flexibility are described below.

Summary of Today's Action

We are permitting a refinery in start-up mode which is unable to meet its anti-dumping standard during the start-up process, but which would otherwise be able to meet the Tier 2 gasoline sulfur standards earlier than required, to petition the Agency for an alternative compliance period. The Tier 2 standards for most refiners take effect in 2006. (See ''Tier 2 Gasoline,'' above, for a more detailed discussion of refiner compliance dates.) A refinery eligible for this relief must be starting up production of conventional gasoline and must never have produced conventional gasoline that was subject to the anti-dumping regulations. To ensure that the refinery will meet the applicable Tier 2 gasoline standards early, the alternative compliance period is limited to a two to five year span, as determined by the Agency. Because of the other requirements associated with this rule, we believe that a refinery would choose to request the shortest alternative compliance period possible. Additionally, a refiner must show that it would be unable to meet its anti-dumping NO_X requirement under the current, one year compliance period. While the anti-dumping standard for a refinery involves both exhaust toxics and NO_X emissions, we are requiring that the proposed alternative compliance period would only be available to a refinery upon a showing that it would otherwise be unable to meet its NO_X standard. This is because sulfur significantly affects NO_X emissions,[3] and decreasing sulfur will result in significant NO_X emission reductions by moving toward the goal of the low sulfur levels required by the Tier 2 standards. Though a refiner may have difficulty meeting its exhaust toxics anti-dumping standard, for which fuel benzene and aromatics are the primary fuel parameters, the refinery units which impact these two fuel parameters are different than those used to reduce sulfur. (Most refineries will need to install new equipment in order

[2] ''Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicles Emissions Standards and Gasoline Sulfur Control Requirements—Final Rule,'' 65 FR 6698 (February 10, 2000). See also 40 CFR part 80 subpart H for regulations applicable to gasoline sulfur.

[3] Under the Complex Model, the tool used to evaluate anti-dumping performance, olefins is the other fuel parameter which significantly impacts NO_X emissions.

to reduce sulfur to the levels required under the Tier 2 standards.) Thus, reducing benzene and/or aromatics does not contribute to the goal of achieving the Tier 2 gasoline sulfur levels early, and, consequently, an alternative compliance period based on the inability to meet the anti-dumping exhaust toxics standard would not be appropriate given the considerations underlying today's rule.

In addition to meeting the Tier 2 gasoline sulfur standards early, the gasoline produced by a refinery over the entire alternative compliance period must result in a net NO_X benefit (compared to the statutory baseline) that is at least twice as large as the total NO_X deficit generated during the period of time during which the refinery produced gasoline that did not comply with the statutory baseline. Additionally, the refiner must purchase stationary source NO_X credits sufficient to offset any NO_X deficit generated (on a quarterly basis) and must meet the specific requirements of this direct final rule, including additional reporting requirements. By modifying the standards applicable to refineries with an alternative compliance period, we are providing appropriate assurance that no environmental disbenefit occurs as a result of allowing an alternative compliance period.

When regulated entities cut emissions more than is required, the ''extra'' environmental benefit may be considered as a pollution credit, usually measured in tons, that may be sold or banked for future use. Emissions trading associations have been created to facilitate the buying and selling of pollution credits. Marketable NO_X credits are currently generated through NO_X reduction programs in 13 states. In addition, there is a multi-state NO_X emission trading program operating in eight Northeastern states that are members of the Ozone Transport Commission. Further information on NO_X trading programs is available on the Internet at www.epa.gov/acidrain/programs.html.

As described below in ''How the Agency Will Act on a Petition'' and ''The Refiner's Responsibilities if a Petition is Granted,'' NO_X credits purchased quarterly to offset any NO_X deficit must be held by a refinery that operates under an adjusted compliance period under this rule. These banked credits function as collateral against any NO_X deficiency that the refiner creates, to minimize the possibility of environmental harm in the event the refinery does not fulfill its obligation under the other requirements of this rule. If, as planned, the refinery eventually produces gasoline that meets and then exceeds the NO_X baseline, the refiner may sell NO_X credits equal to the benefit produced during that quarter. If the refinery violates the conditions under which its petition is granted, the NO_X credits may be forfeited. The intention of this provision is that environment will suffer no net loss, although any NO_X deficit may occur in a different location than a NO_X credit was generated. Much of the gasoline in the U.S. is produced on the Gulf Coast and other coastal areas and shipped throughout the country, primarily by pipeline. Gasoline is fungible, and is normally transported in pipelines mixed with other batches that meet the same specifications. In general, it is not possible to predict where a particular batch of gasoline included in larger shipment will end up; as a result, it is not generally possible to predict where a NO_X deficit may occur. Similarly, it is not possible to predict where the air quality benefit from the doubled payback of any NO_X deficit will occur.

Who May Petition for an Alternative Anti-Dumping Compliance Period

A refiner may petition EPA for an alternative compliance period for any refinery that is starting up gasoline production for the first time under the anti-dumping requirements, that is subject to the statutory baseline, and that can demonstrate a significant hardship with regard to producing gasoline conforming to the statutory baseline for NO_X in the early years of production. Flexibility with regard to alternative anti-dumping compliance periods will be particularly helpful for challenged refiners (as described in the Tier 2 gasoline sulfur rule), including small refiners; however, any refiner who meets the threshold conditions above may submit a petition. The petition may be for a domestic or foreign refinery. The refiner must have specific plans to bring its gasoline into compliance with the statutory baseline early enough through the alternative compliance period in order to achieve the two-fold NO_X payback. Furthermore, the refiner must have specific and demonstrable plans to produce gasoline to pay back any NO_X deficit by the end of the requested compliance period. For many refiners, these plans would likely include early installation of sulfur-reducing technologies necessary to meet the Tier 2 gasoline standards.

When Must Petitions Be Received?

A refiner who meets the threshold conditions may petition the Agency for an alternative anti-dumping compliance period. For reasons discussed in the preceding sections, we believe that the window during which this flexibility is appropriate is the period before the Tier 2 gasoline program standards fully apply. Therefore, petitions for alternative anti-dumping compliance periods of four or five years in length must be received by no later than June 1, 2001. For an alternative compliance period of two or three years in length, the petition must be received no later than June 1, 2003. No alternative anti-dumping compliance period may be designed to start, or requested to start, after January 1, 2004 or to end after December 31, 2005.

What A Petition for an Alternative Anti-Dumping Compliance Period Must Contain

A refiner may petition for an alternative anti-dumping compliance period of two, three, four, or five years in length. The petition must, at a minimum, contain:

- The business name and address and any location(s) where the refiner conducts operations.
- The name and contact information for the responsible corporate officer and a contact person who can provide further clarification with regard to information in the petition.
- A detailed explanation of why the refinery is eligible to request an alternative anti-dumping compliance period. This explanation would include documentation showing that the refinery is starting up production and has never produced conventional gasoline subject to the anti-dumping regulations and information demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO_X standard.
- The length of the averaging period requested (2, 3, 4, or 5 years) and a justification for why that length of averaging period is required.
- An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO_X.
- The refinery's estimated gasoline production and average NO_X level for each of the years in which the alternative averaging period is required.
- A detailed description of the current refinery equipment and configuration.
- A detailed description of any changes or enhancements to the refinery equipment and configuration that will occur during the alternative averaging period requested.
- The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).

• A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.

• A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO_X credits sufficient to offset the maximum projected NO_X deficit. An equation for calculating the NO_X deficit and NO_X benefit is included in the regulations.

• A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.

• A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.

• Any other information the Administrator may require in order to fully evaluate the refiner's petition. Such information would include requests for clarification of any item(s) included in the petition that is necessary in order to render a final decision as to whether to grant or reject the petition.

The above items represent, at a minimum, the topics that must be addressed in the petition. The refiner may wish to elaborate on certain topics—*e.g.,* if it faces particular hardship because it is a small business or if its refinery faces other, unique challenges that may influence the Agency's decision on the petition.

If we find that any refiner has provided false or inaccurate information in connection with its petition, we will notify the refiner and the application of any alternative anti-dumping compliance period will be *void ab initio.*

How the Agency Will Act on a Petition and the Refiner's Responsibilities if a Petition Is Granted

Notification of Approval or Disapproval of Petition, and Dates by Which the Refinery Must Meet the Statutory NO_X Baseline Standard and Pay Back Double the NO_X Deficit

We will notify a refiner of approval or disapproval of its petition by mail after considering a complete petition. If approved, we will notify the refiner of the alternative anti-dumping compliance period approved (*i.e.,* two, three, four, or five years) and the interim standards that must be met. The interim standards shall be as set forth in the regulations and include two major standards that the refinery must meet. The first standard sets forth the date by which the refinery must start to comply with the statutory baseline NO_X standard, on average, for all its gasoline. For example, for a two year averaging period, the refiner must achieve this by the seventh quarter. Once the first date is reached, the refiner must continue to meet the statutory baseline standard for NO_X, on average, for all gasoline it produces.

The second standard sets forth the date by which the refinery must pay back double the NO_X deficit. This date corresponds to the end of the alternative averaging period. For example, for a two year averaging period, the refinery must pay back double the NO_X deficit by the end of the second year. Failure to meet one of these standards will result in a violation of the anti-dumping regulations. The anti-dumping standards, including NO_X emissions, are defined in units of milligrams per mile. In order to quantify the NO_X deficit or benefit in tons under today's rule, it is necessary to know the variance from the standard, the volume of gasoline involved and the average fuel economy for the overall national fleet of gasoline powered vehicles. For the purpose of these calculations, we are using the most current data as presented in the Calendar Year 1999 National Highway Traffic and Safety Administration report to Congress of 24.5 miles per gallon. Thus the constant figure in both equations of 2.7×10^{-8} is the product of the above fuel economy factor and the conversion from milligrams to tons. The average NO_X level and volume of gasoline produced during the quarter are self explanatory. The equations for calculating NO_X deficit and benefit are as follows:

NO_X Deficit:

$$NO_{X_{Def}} = \left(NO_{X_{ad}} - 1461\right) * G_d * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Def}}$=the NO_X deficit for the quarter(s) the refiner's annual average NO_X performance exceeds the applicable NO_X standard of 1461 mg/mile, expressed in tons.

$NO_{X_{ad}}$=the average volume weighted NO_X emissions performance for the quarter(s) the refiner exceeds the applicable NO_X standard, measured in mg/mile.

G_d=the volume of gasoline produced during the quarter(s) the refiner exceeds the applicable NO_X standard, measured in gallons.

NO_X Benefit:

$$NO_{X_{Ben}} = \left(1461 - NO_{X_{ab}}\right) * G_b * 2.7 \times 10^{-8}$$

Where:

$NO_{X_{Ben}}$=the NO_X benefit during the quarter(s) the refiner's annual average NO_X performance is below the applicable NO_X standard of 1461 mg/mile.

$NO_{X_{ab}}$=the average volume weighted NO_X emissions performance for the quarter(s) the refiner is below the applicable NO_X standard, measured in mg/mile

G_b=the volume of gasoline produced during the quarter(s) the refiner is below the applicable NO_X standard, measured in gallons.

The calculations are to be performed on a quarterly basis. As an example, a 10,000 barrel per day refinery would produce 37.8 million gallons during a given quarter. Assuming the gasoline, on average, met a NO_X standard of 1500 mg/mi, the total NO_X deficit for the quarter would be

$$39.8 \text{ tons} = (1500 - 1461) * 37{,}800{,}000 * 2.7 \times 10^{-8}$$

As an example of how the NO_X deficit must be paid back on a two for one basis, assume that the same refinery has a two year alternative averaging period. Assuming that the refinery were to produce the same quality and volume of gasoline for the first five quarters and then began to produce gasoline meeting the statutory baseline (in order to meet the first standard), the total NO_X deficit, in tons, would be 199 tons. In order to meet the second standard, the paying back of double the NO_X deficit, the refiner would have to produce a total NO_X benefit of 199 * 2, or 398 tons of NO_X benefit. Thus, the alternative averaging period is designed to ensure that there is no overall environmental detriment by requiring a certain about of NO_X overcompliance.

Interim Milestones

A refiner may qualify for an extended averaging period only if, at the time of the petition, it activates a refinery that faces substantial demonstrated hardship in producing gasoline which meets the anti-dumping statutory baseline NO_X standards during the early years of production. EPA believes that this hardship is most likely to be the result

of a lack of the necessary refinery processing equipment. Moreover, it will be necessary for such a refiner to obtain this processing equipment in order to begin producing gasoline that will allow the refinery to comply with the overall alternative averaging period NO_X standard. However, if such a refiner fails to obtain this processing equipment in a timely manner it is likely the refiner will not be able to offset the NO_X deficit created during the first phase of the extended averaging period by the require compliance deadline.

For this reason EPA believes it is appropriate for a refiner who has been granted an extended averaging period to demonstrate that reasonable progress is being made toward obtaining necessary processing equipment. As a result, under today's rule EPA is requiring refiners to include in extended averaging period petitions the expected dates for key milestones for obtaining necessary processing equipment. These milestones normally would include the dates for signing the contract for equipment design, for obtaining necessary permits, for obtaining financing commitments, and for breaking ground for construction. During the petition review EPA intends to evaluate the milestones proposed by the refiner and establish appropriate milestones that will be incorporated into any petition approval. The refiner will be required to submit reports to EPA demonstrating these milestones are met as a contingency for continued operation under the alternative compliance period.

Upon a refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, the Administrator would have the discretion to accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO_X standard, so that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. That is, a failure to meet a milestone may result in a requirement for the refinery to begin producing gasoline that complies with the statutory baseline beginning with the next quarterly averaging period and continuing thereafter. The acceleration of the requirement regarding compliance with the annual average statutory baseline NO_X standard would not affect any of the other standards or requirements applicable to the refinery under this section (e.g., the refinery would still be required to comply with the overall alternative averaging period NO_X standard by producing gasoline that overcomplies with the annual average statutory NO_X standard by twice as much as the early NO_X deficit generated by the refinery). Moreover, upon the refiner's failure to meet a milestone, or failure to submit a milestone report by the required date, the refiner would forfeit any NO_X credits that it was required to have banked as of that time. EPA realizes that a refiner in this situation may not be able to produce gasoline that meets the statutory baseline and may be forced to produce products other than gasoline, such as blendstocks, or to close the refinery. However, allowing such a refiner to generate additional NO_X deficits would only result in additional environmental harm.

Additional Requirements

In addition to the requirements described in the preceding paragraph, the following general requirements apply to a refinery for which a petition is granted:

- The refinery must meet all applicable statutory baseline standards for an annual average compliance period, except the standard for NO_X. For example, this means that the refinery must comply with the toxics standards on an annual basis.
- The refiner must designate all gasoline produced during the period of time that the refinery does not meet the annual average statutory baseline standards as gasoline with a volatility of 9.0 pounds per square inch (psi).
- A refiner for which a petition is granted must provide a written demonstration that it has purchased and banked NO_X credits equal to the NO_X deficit calculated for the end of the preceding quarter and must retain these banked credits throughout the current quarter. The NO_X credits are necessary in order to guarantee that the refinery does not generate a net NO_X detriment. The amount of NO_X credits required to be banked will be calculated each quarter. When the refinery begins to produce conventional gasoline that, on average, meets the anti-dumping NO_X standard, it may sell NO_X credits off in an amount equal to any NO_X benefit generated in the preceding quarter. We believe that this approach permits more flexibility for the start-up refinery than an approach that would require them to make a significant up-front purchase of credits equal to the entire projected NO_X deficit for the alternative averaging period.
- A refinery for which a petition is granted may not generate any Tier 2 sulfur credits or allotments during the entire alternative anti-dumping compliance period.
- A refinery for which a petition is granted must submit anti-dumping compliance reports more frequently than other conventional gasoline refineries. This enhanced reporting will ensure that the refinery is on target with meeting the interim performance goals. The documents that must be submitted include quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter, and documents that demonstrate the refiner has purchased and banked the necessary amount of NO_X credits to equal the NO_X deficit calculated for that quarter.

Change in Alternative Averaging Period

At any point during the pendency of the alternative conventional gasoline anti-dumping compliance period the Administrator may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. For example, if a refinery originally received an alternative compliance period with a duration of 2 years beginning on January 1, 2001, at any time prior to the end of that compliance period (January 1, 2003), the Administer may approve an application to assign to the refinery the standards and requirements that would have been applicable to the refinery had the refinery originally received one of the other alternative compliance periods. Any refinery for which a change in the applicable alternative compliance period is approved must thereafter operate as if the refinery had originally requested and received such new alternative compliance period, and shall be subject to the standards and other requirements applicable under such new alternative compliance period. Consequently, for a refinery with an original alternative compliance period of 2 years beginning on January 1, 2001 (which would end on January 1, 2003), for which the Administrator later approves a change to a 3 year compliance period on January 1, 2002, the termination date for the new alternative compliance period would be January 1, 2004, and the refinery would need to begin producing gasoline that complies with the annual average statutory baseline during the quarter beginning January 2004.

The Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject. No such application may result

in an alternative compliance period that extends beyond January 1, 2006. A refinery for which the Administrator approves a change in the alternative compliance period will be subject to all the standards and other requirements of the new alternative compliance period as well as any additional conditions or requirements that are included in the approval of the application for a changed alternative compliance period. Accept as specifically modified by this section, such refinery must continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards.

IV. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (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 entitlement, 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.

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 generally relaxes the requirements of the anti-dumping program and provides regulated parties with more flexibility with respect to compliance with the anti-dumping requirements. Pursuant to the terms of Executive Order 12866, OMB has notified us that it does not consider this a ''significant regulatory action'' within the meaning of the Executive Order and has waived review.

B. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This direct final rule does not have federalism implications. This direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule would permit refiners to petition for alternative anti-dumping compliance periods and does not impose any substantial direct effects on the states. Thus, Executive Order 13132 does not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, or 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 we consult with those governments. If we comply by consulting, Executive Order 13084 requires us 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 our 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 us 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.''

Today's direct final rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's direct final rule does not create a mandate for any tribal governments. This direct final rule applies to gasoline refiners. Today's action makes some changes that would generally provide flexibility within the Federal anti-dumping requirements, and does not impose any enforceable duties on communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this direct final rule.

D. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that has not more than 1,500 employees (13 CFR 121.201); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, the Administrator has determined that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's direct final rule would provide regulatory relief by permitting regulated parties, including small entities, to seek an extended anti-dumping compliance period. We have therefore concluded

that today's direct final rule will relieve regulatory burden for all small entities. We continue to be interested in the potential impacts of the direct final rule on small entities and welcome comments on issues related to such impacts.

E. Paperwork Reduction Act

This action establishes a petition process that involves the collection of information. It also requires reports that will utilize existing RFG and anti-dumping reporting forms. Refiners that request alternative compliance periods for anti-dumping are already subject to anti-dumping reporting requirements, which include annual compliance reporting, but although refiners of RFG are required to submit quarterly batch reports and laboratory reports, refiners of conventional gasoline under the anti-dumping program are not generally subject to this quarterly reporting requirement. A refiner granted an alternative compliance period for anti-dumping under this rule would become subject to quarterly batch reporting and laboratory reports. Since this constitutes the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, the existing Information Collection Request (ICR) for the RFG and anti-dumping program will be submitted to OMB for approval to the collection of any information. A separate **Federal Register** notice will be published regarding the ICR. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG and anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1591.07).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. 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 actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us 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 us 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 establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, an agency 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 regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final 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 direct final rule would impose no enforceable duty on any State, local or tribal governments or the private sector. This direct final rule applies to gasoline refiners. Today's action would provide regulated parties with more flexibility with respect to compliance with the anti-dumping requirements.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62FR19885, 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 we have 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.

We interpret 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 direct final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. This direct final rule permits flexibility in establishing extended anti-dumping compliance periods in narrow circumstances where a net environmental benefit is expected.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our 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, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's action does not establish new technical standards or analytical test methods, and does not affect existing technical standards or analytical test methods.

I. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement 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. We 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), and is not subject to the 60 day requirement. This direct final rule will be effective October 23, 2000, unless EPA receives adverse comments or a request for a public hearing on the rule (see **DATES** section above).

J. Statutory Authority

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

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Anti-dumping, Reformulated gasoline.

Dated: August 30, 2000.

Carol M. Browner,

Administrator.

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

PART 80—[AMENDED]

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

Authority: Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 USC 7414, 7545, and 7601(a).

* * * * *

2. Section 80.101 is amended by revising paragraph (a) and adding paragraph (k) to read as follows:

§ 80.101 Standards applicable to refiners and importers.

* * * * *

(a) *Averaging period.* The averaging period for the standards specified in this section shall be January 1 through December 31, except as provided in paragraph (k) of this section.

* * * * *

* * *

(k) *Petitions for an alternative anti-dumping averaging period.*

(1) *Eligibility for petition.* (i) The Administrator may grant an averaging period of two, three, four or five years upon petition of a refiner who:

(A) Activates or plans to activate conventional gasoline production at a refinery that has never produced gasoline subject to the anti-dumping requirements of subpart E of this part; and

(B) Faces substantial, demonstrated hardship in meeting the anti-dumping statutory baseline NO_X standard during the early years of production.

(ii) The Administrator will consider the refiner's or refinery's compliance with all applicable Federal, state, and local environmental statutes or requirements in evaluating the petition, including, but not limited to, any applicable stationary source requirement or standards.

(2) *Contents of a petition.* A petition for a four or five year averaging period must be submitted by June 1, 2001. A petition for a two or three year averaging period must be submitted by June 1, 2003. Regardless of the averaging period requested, the petition must include:

(i) The business name and address of the affected refinery and any location(s) where the refiner conducts operations.

(ii) The name, address, phone number, fax number, and e-mail address of the responsible corporate officer and contact person who can provide clarification and explanation with regard to any information in the petition.

(iii) A detailed explanation of why the refinery is eligible for an alternative anti-dumping compliance period under paragraph (k)(1) of this section, including:

(A) Documentation the refinery has never produced gasoline that was subject to the anti-dumping standards under subpart E of this part and

(B) Documentation demonstrating the hardship the refinery will experience meeting the anti-dumping statutory baseline NO_X standard.

(iv) The length of the averaging period requested and a justification for why that length of averaging period is required.

(v) An estimate as to when the refinery can produce gasoline that will meet the statutory baseline standard for NO_X.

(vi) The refinery's estimated gasoline production and annual average NO_X level for each of the years for which the alternative averaging period is requested.

(vii) A detailed description of the current refinery equipment and configuration.

(viii) A detailed description of changes to the refinery equipment the refiner intends to complete in order to begin producing gasoline that will allow the refinery to comply with the overall alternative averaging period NO_X standard, and for such changes the intended dates for events the refiner believes are appropriate for demonstrating reasonable progress towards completion of the changes, including the following events:

(A) Sign the design contract;

(B) Obtain necessary permits;

(C) Obtain construction financing commitments;

(D) Begin construction.

(E) Complete construction

(ix) The current nominal crude capacity of the refinery as reported to the Energy Information Administration (EIA) of the Department of Energy (DOE).

(x) A detailed explanation of the refiner's plans to finance capital improvements at the refinery in order to meet all current applicable EPA gasoline and diesel fuel quality standards.

(xi) A demonstration that the refiner has the funds and identified sources from which to purchase stationary source NO_X credits sufficient to offset the maximum projected NO_X deficit as calculated in accordance with paragraph (k)(4)(ii) of this section on a quarterly basis.

(xii) A full disclosure and explanation of any matters of non-compliance or violations of any environmental statutes or requirements for which the refiner has received notification by any state, local, or Federal agency.

(xiii) A signed agreement by any parent company or, in the case of a joint venture, individual partners, if applicable, acknowledging that they will be liable for any violations.

(xiv) Any other information the Administrator may require in order to fully evaluate the refiner's petition.

(xv) The signature of a responsible corporate officer, certifying that the information contained in the petition is true.

(3) *NO_X standards and other requirements applicable to refineries operating under an alternative anti-dumping averaging period.* If a petition by a refiner is approved, the standards described in this paragraph shall be the standards applicable to the refinery identified in the petition for purposes of the anti-dumping program during the period of the alternative averaging period. Except as specifically modified by this section, the refinery must

continue to comply with all other standards applicable under the anti-dumping standards of subpart E of this part.

(i) A refinery shall meet the following deadlines for compliance with the statutory baseline, depending on the length of the alternative averaging period applicable to the refinery:

Length of compliance period in years	Compliance period must start no. later than January 1st of	Refinery must comply with the Statutory Baseline NO_X standard, on average, for gasoline produced beginning with the
2	2004	7th quarter and all subsequent quarters.
3	2003	10th quarter and all subsequent quarters.
4	2002	13th quarter and all subsequent quarters.
5	2001	20th quarter and all subsequent quarters.

(ii) By the end of the applicable alternative averaging period, the gasoline that the refinery has produced over the entire averaging period must result in a net NO_X benefit (compared to the statutory baseline) that is at least twice as large as the total NO_X deficit generated during the period of time during which the refinery produced gasoline that did not comply with the statutory baseline. For the purposes of this paragraph, the NO_X deficit and the NO_X benefit in tons shall be calculated in accordance with the following equations:

NO_X Deficit:

$$NO_{X_{Def}} = \left(NO_{X_{ad}} - 1461\right) * G_d * 2.7 \times 10^{-8}$$

Where:

NO_{XDef} = the NO_X deficit in tons for the quarter(s) the refiner's annual average NO_X performance exceeds the applicable NOx standard of 1461 mg/mile.

NO_{Xad} = the average volume weighted NOx emissions performance for the quarter(s) the refiner exceeds the applicable NO_X standard, measured in mg/mile.

G_d = the volume of gasoline produced during the quarter(s) the refiner exceeds the applicable NO_X standard, measured in gallons.

NO_X Benefit:

$$NO_{X_{Ben}} = \left(1461 - NO_{X_{ab}}\right) * G_b * 2.7 \times 10^{-8}$$

Where:

NO_{XBen} = the NO_X benefit in tons during the quarter(s) the refiner's annual average NO_X performance is below the applicable NO_X standard of 1461 mg/mile.

NO_{Xab} = the average volume weighted NO_X emissions performance for the quarter(s) the refiner is below the applicable NO_X standard, measured in mg/mile.

G_b = the volume of gasoline produced during the quarter(s) the refiner is below the applicable NO_X standard, measured in gallons.

(iii) For each quarter for which the refinery produces gasoline for which there is a NO_X deficit, the refiner shall purchase and bank stationary source NO_x credits that are equal to or greater than the amount of the NO_X deficit generated during the previous quarter, and provide written demonstration of such transaction to the Administrator. These NO_X credits are in addition to any credits purchased during any previous quarters. NO_X deficit is to be calculated on a quarterly basis in accordance with the equation in paragraph (k)(3)(ii) of this section. No NO_X credits purchased by the refiner may contribute to the refinery's compliance with the requirements of paragraphs (k)(3)(i) and (k)(3)(ii). The refinery may sell NO_X credits purchased under this paragraph once the standard in paragraph (k)(3)(i) is met and in an amount equal to the NO_X benefit generated, as calculated on a quarterly basis.

(iv) (A) The refinery shall not generate marketable credits or allotments under the Tier 2 gasoline program provisions of Subpart H of this part during the entire alternative averaging period and shall provide a written statement, on a quarterly basis, certifying that the refinery has not generated, produced, sold, or transferred any such marketable credits or allotments under Subpart H of this part.

(B) If the final quarter of the alternative averaging period ends on a date other than December 31, then the refiner may generate credits for that portion of the year that was not subject to the alternative averaging period.

(v) The refinery shall market any conventional gasoline it produces that is subject to the requirements of § 80.27 as 9.0 RVP gasoline until the standard in paragraph (k)(3)(i) of this section is met.

(vi) A refinery that has been granted an averaging period under this section must submit the following reports to the Administrator within 30 days of the end of each calendar quarter:

(A) Quarterly batch reports and anti-dumping averaging reports for gasoline produced during each quarter; and

(B)(*1*) Documents that demonstrate compliance with the requirements under paragraph (k)(3)(iii) and (k)(3)(iv) of this section. including a calculation of the NO_X deficit or benefit for that quarter and a current total, based upon all quarters, indicating the current NO_X deficit or NO_X benefit balance for the refinery; and

(*2*) A statement of the number of NO_X credits purchased or sold during the quarter and a current total, based upon all quarters, indicating the current balance of NO_X credits; and

(*3*) Any contractual documents, or other documents, evidencing the purchasing and banking of NO_X credits.

(vii) The Administrator may specify, as part of the approved petition, deadlines by which a refiner is obligated to take certain actions (including those listed in paragraph (k)(2)(viii) of this section) demonstrating reasonable progress toward completion of the refinery changes necessary to produce gasoline that will allow the refinery to comply with the overall alternative averaging period NO_X standard.

(viii) The refiner shall submit reports demonstrating compliance with deadline requirements under paragraph (k)(3)(vii) of this section no later than 30 days after the applicable deadline occurs. Upon failure to meet a deadline requirement under paragraph (k)(3)(vii) of this section, the Administrator may accelerate the date by which the refiner would have to produce gasoline that complies with the annual average statutory baseline NO_X standard under paragraph (k)(3)(i) of this section such that the gasoline produced by the refinery beginning with the quarter immediately following the quarter during which the failure occurred (and during each subsequent quarter) would have to meet that standard. The acceleration of the requirement under paragraph (k)(3)(i) of this section, regarding compliance with the annual average statutory baseline NO_X standard, does not affect the applicability of any other standard or requirement applicable to the refinery under this or any other section of the Act (*e.g.,* the refinery must still comply with the overall alternative averaging period NO_X standard by producing gasoline that overcomplies with the annual average statutory NO_X standard

by twice as much as the early NO_X deficit generated by the refinery).

(ix) The refiner shall comply with any condition or requirement prescribed by the Administrator as part of the petition approval.

(x) The refinery must comply with all standards in this paragraph and with all applicable anti-dumping standards in Subpart E of this section, except the NO_X standard.

(4) *Approval or disapproval of petitions.* The Administrator will approve or disapprove the petition within six months of receipt, in writing, and in the case of an approval will include any conditions or requirements to which the approval is subject.

(5) *Effective date for alternative averaging period.* (i) For an approved petition, the alternative averaging period shall become effective with the first day of the next calendar quarter, unless the first day of a later calendar quarter is requested.

(ii) If the final quarter of the alternative averaging period ends on a date other than December 31, then the refiner must demonstrate compliance with anti-dumping standards for gasoline produced during the remainder of that year and must demonstrate such compliance via the annual report as specified in § 80.105.

(6) *Refinery request for a change in alternative averaging period.* At any point during the pendency of an alternative conventional gasoline anti-dumping compliance period the Administrator may, upon application by a refiner, approve a different alternative compliance period for a refinery already operating subject to an alternative compliance period. In any such case:

(i) A refinery for which a change in the applicable alternative compliance period is approved shall thereafter operate as if the refinery had originally requested and received such alternative compliance period, and shall be subject to the standards and other requirements applicable under such alternative compliance period.

(ii) The Administrator will approve or disapprove any application for a different alternative compliance period, in writing, within six months of receipt, and in the case of an approval will include any conditions or other requirements to which the approval is subject;

(iii) Accept as specifically modified by this section, such refinery must continue to comply with all other standards and other requirements applicable under the conventional gasoline anti-dumping standards; and

(iv) No application may result in an alternative compliance period that extends beyond January 1, 2006.

(7) *Violations under this paragraph (k).* Any person who fails to meet a standard or other requirement under this paragraph (k) shall be liable for penalties under § 80.5. Additionally, in the event that the refiner fails to achieve the required NO_X benefit calculated under paragraph (k)(3)(ii) of this section, any NO_X credits still banked under paragraph (k)(3)(iii) of this section shall be forfeit.

[FR Doc. 00–22808 Filed 9–7–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 98–147; FCC 00–297]

Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document strengthens the collocation requirements placed upon incumbent local exchange carriers (LECs) pursuant to section 251(c)(6) of the Communications Act of 1934, as amended. The Order on Reconsideration adopts national standards that incumbent LECs must meet in processing physical collocation applications and provisioning physical collocation arrangements. The Order on Reconsideration also resolves issues and adopts requirements regarding adjunct collocation, space denial standards, safe-time work practices, and other collocation-related areas.

DATES: Effective October 10, 2000, except for §§ 51.321(f), 51.323(b) and 51.323(l)(1), which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of those sections.

FOR FURTHER INFORMATION CONTACT: William Kehoe, Special Counsel, or Julie Patterson, Attorney Advisor, Common Carrier Bureau, Policy and Program Planning Division, 202–418–1580. Further information also may be obtained by calling the Common Carrier Bureau's TTY number: 202–418–0484. For additional information concerning the information collections in this Order on Reconsideration, contact Judy Boley at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration in CC Docket No. 98–147, FCC 00–297, adopted on August 9, 2000, and released August 10, 2000. The complete text of this Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 Twelfth Street, S.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS), CY–B400, 445 Twelfth Street, S.W., Washington, D.C.

Synopsis of the Second Report and Order

1. The Commission adopts the Order on Reconsideration to further strengthen its collocation rules in response to Sprint Corporation's (Sprint's) June 1999 petition for partial reconsideration or clarification of the Advanced Services First Report and Order. Those rules implement section 251(c)(6) of the Communications Act of 1934, as amended, which requires incumbent LECs to provide for collocation of equipment necessary for interconnection or access to unbundled network elements on terms and conditions that are just, reasonable and non-discriminatory.

2. We conclude in this Order on Reconsideration that national collocation standards are necessary to ensure that incumbent LECs comply with the statutory obligation set forth in section 251(c)(6). We require that, except to the extent a state sets its own standards or the requesting carrier and the incumbent LEC have mutually agreed to alternative standards, an incumbent LEC must notify the requesting telecommunications carrier as to whether a collocation application has been accepted or denied within ten calendar days after receiving the application. We also require that if the incumbent LEC deems a collocation application unacceptable, it must advise the competitive LEC of any deficiencies within this ten calendar day period. We require that an incumbent LEC must provide sufficient detail so that the requesting carrier has a reasonable opportunity to cure each deficiency. We specify that to retain its place in the incumbent LEC's collocation queue, the competitive LEC must cure any deficiencies in its collocation application and resubmit the application within ten calendar days after being advised of them. We also