

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS-FRL-6768-4]

RIN 2060-A169

Control of Air Pollution From New Motor Vehicles; Amendment to the Tier 2/Gasoline Sulfur Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would correct, amend, and revise certain Tier 2/Gasoline Sulfur regulations to assist regulated entities with program implementation and compliance. First, it would make minor corrections to clarify the regulations governing compliance with the gasoline sulfur standards. Second, with respect to the low sulfur gasoline program, it would revise the boundaries of the Geographic Phase-in Area (GPA) to include counties and tribal lands in states adjacent to the eight original GPA states. The intention of this amendment is to ensure a smooth transition to low sulfur gasoline nationwide and to mitigate the potential for gasoline supply shortages. Third, it would amend certain provisions of the small refiner and Averaging, Banking, and Trading (ABT) programs to assist domestic and foreign refiners and importers in establishing gasoline sulfur baselines for credit and allotment generation purposes. Fourth, it would revise certain sampling and testing provisions for low sulfur gasoline to enable certain refiners to generate early credits and/or allotments under the ABT program. Finally, this proposal would make minor revisions to the regulations governing compliance with the vehicle standards. We plan to make other necessary corrections, amendments, and

revisions to the Tier 2/Gasoline Sulfur regulations in a future rulemaking.

DATES: Comments or requests for a public hearing must be received by June 12, 2001.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A-97-10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M-1500, 401 M Street, SW., Washington, DC 20460. Materials related to this rulemaking are available at EPA's Air Docket for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260-7548 and by facsimile at (202) 260-4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214-4873, fax (734) 214-4051, e-mail manners.mary@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to approve corrections, amendments, and revisions to the Tier 2/Gasoline Sulfur regulations (65 FR 6698, February 10, 2000). However, in the "Rules and Regulations" section of today's **Federal Register** publication, we are approving these corrections, amendments, and revisions as a direct final rule without prior proposal language because we view this as a noncontroversial rule and anticipate no adverse comment. For further information, including the regulatory text for this proposal, please refer to the direct final rule that is located in the

"Rules and Regulations" section of this **Federal Register** publication. The direct final rule will be effective on July 12, 2001 without further notice unless we receive adverse comment or a request for a public hearing by June 12, 2001. If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of the direct final rule.

Regulated Entities

Entities potentially regulated by this proposed action include those that manufacture new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It would also affect you if you produce, distribute, or sell gasoline.

The table below gives some examples of entities that would have to comply with the proposed regulations if they are finalized. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR parts 80 and 86. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
Industry	336111 336112 336120	3711	Motor Vehicle Manufacturers.
Industry	336311 336312 422720 454312 811198 541514 541690 811112	3592 3714 5172 5984 7549 8742 8931 7533	Alternative Fuel Vehicle Converters.
Industry	811198 541514	7549 8742	Commercial Importers of Vehicles and Vehicle Components.
Industry	324110	2911	Petroleum Refiners.
Industry	422710 422720	5171 5172	Gasoline Marketers and Distributors.
Industry	484220	4212	Gasoline Carriers.

Category	NAICS codes ^a	SIC codes ^b	Examples of potentially regulated entities
	484230	4213	

^aNorth American Industry Classification System (NAICS).
^bStandard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's proposal is available electronically on the day of publication from the Office of the Federal Register Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with this proposal are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site:
<http://www.epa.gov/docs/fedrgstr/epair/> (Either select a desired date or use the Search feature.)

Tier 2/Gasoline Sulfur home page:
<http://www.epa.gov/otaq/tr2home.htm>.

Please note that due to differences between the software used to develop the document and the software into which the document may be

downloaded, changes in format, page length, etc., may occur.

Outline of This Preamble

- I. Proposed Clarifications and Other Minor Corrections
- II. Geographic Phase-in Area
 - A. Application Deadline for GPA Standards
 - B. How Did We Establish the Geographic Phase-in Area?
 - C. How Do We Propose to Establish the GPA in the Adjoining States?
 - D. What Are the Results of the GPA Counties Process?
- III. Small Refiners
 - A. Documentation of Crude Oil Capacity by Foreign Refiners
 - B. Oxygenates Included in Baseline
- IV. Credits and Allotments
 - A. Baseline Calculations
 - B. Refineries That Were Non-operational in 1997-98
 - C. Foreign Refiners With Approved 1990 Baselines Who Did Not Submit Anti-dumping Compliance Reports to EPA in 1997-1998
- V. Sampling and Testing
 - A. Obtaining Test Results Before Gasoline Leaves the Refinery

- 1. Before January 1, 2004
- 2. January 1, 2004 and Beyond
- B. Sample Retention
 - 1. Limitation on Length of Time to Retain Samples
 - 2. Compositing Samples
 - 3. Sample Retention for Reformulated Blendstocks for Oxygenate Blending
- VI. Changes to Vehicle Compliance Regulations
- VII. Administrative Requirements
 - A. Administrative Designation and Regulatory Analysis
 - B. Regulatory Flexibility
 - C. Paperwork Reduction Act
 - D. Intergovernmental Relations
 - 1. Unfunded Mandates Reform Act
 - 2. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
 - 3. Executive Order 13132 (Federalism)
 - E. National Technology Transfer and Advancement Act
 - F. Executive Order 13045: Children's Health Protection
- VIII. Statutory Provisions and Legal Authority

I. Proposed Clarifications and Other Minor Corrections

Section	Description of clarification or correction
§ 80.216(a)(1)(i) and (a)(2)	Revise to clarify that the refinery annual average standard for GPA gasoline is 150.00 ppm instead of 150 ppm, in accordance with the annual average refinery standards under § 80.195(a)(1) and § 80.240(a) which are expressed to two decimals.
§ 80.230(a)(1)	Revise to change "of" to "with" for clarity.
§ 80.225(d)	Revise to clarify that the employee/crude oil criteria applies to parties seeking small refiner status under § 80.225(d).
§ 80.235(g)(1)	Revise to change the phrase "baseline standard and volume, and per-gallon cap" to "annual average sulfur standard, baseline volume and per-gallon cap standard," and to add the words "for the 2004-2007 averaging periods" for clarity.
§ 80.245(a)(3)	Revise to conform language to other provisions relating to requirements for establishing a sulfur baseline. This revision does not change the substance of the baseline provisions under § 80.245.
§ 80.250(a)(1) and (a)(2)	Revise to clarify that foreign refiners must include only gasoline imported into the U.S. in calculating a small refinery's baseline and baseline volume. Also Revise to reference requirements under § 80.245(a)(3).
§ 80.285(a)(1)(i)	Revise to add the words "for a refinery" for clarity.
§ 80.285(a)(1)(ii)	Revise to add the words "for refineries" and "refineries" for clarity.
§ 80.285(a)(1)(iii)	Revise to add the words "for that refinery" for clarity.
§ 80.285(b)(1)(i)	Revise to add the words "for any refinery" for clarity.
§ 80.285(b)(1)(ii)	Revise to clarify that, for refiners of GPA gasoline, credits generated beginning in 2004 are based on the refinery's annual average sulfur standard for GPA gasoline established under § 80.216(a).
§ 80.285(b)(2)	Revise to add "under § 80.310" for clarity.
§ 80.295(a)	Revise to clarify that foreign refiners must include only gasoline imported into the U.S. in calculating a sulfur baseline under § 80.295.
§ 80.295(b)	Revise to change an incorrect reference to § 80.65. The correct reference is § 80.69. Also Revise to add the words "for a refinery" and "for that refinery" for clarity.
§ 80.305(a)	Revise to clarify in the definition of the term V _a that foreign refiners must include only gasoline imported into the U.S. in calculating early credits under § 80.305, and to clarify in the definition of the term S _a that the annual average sulfur level used in the equation in this section is calculated in accordance with § 80.205.
§ 80.305(d)	Revise to add "for a refinery" and "at that refinery" and to change "refiner's" to "refinery's" for clarity.
§ 80.310(b)	Revise to clarify in the definition of the term S _{std} that the standard for GPA gasoline is the standard established for GPA gasoline for the refinery under § 80.216(a), and to clarify in the definition of the term S _a that the annual average sulfur level used in the equation in this section is calculated in accordance with § 80.205.

Section	Description of clarification or correction
§ 80.410(f)(2)(ii)	Revise to change an incorrect reference to paragraph (c)(3)(i). The correct reference is paragraph (c)(3)(ii).
§ 80.410(s)	Revise to change an incorrect reference to paragraph (r). The correct reference is paragraph (p).
§ 86.1810-01(l)(1)	Correct an inadvertent limitation of applicability by removing the model year designations in the referenced section numbers.
§ 86.1810-01(m)(1)	Correct an inadvertent limitation of applicability by removing the model year designations in the referenced section numbers.
§ 86.1811-04(c)(3)(i) and (ii)	Revise to clarify the applicability of the NMOG –standard to flex, bi- or dual-fueled vehicles on the gasoline or diesel portion of certification only.
§ 86.1811-04(e)	Revise to delete an erroneous statement about the applicability of the spitback standard to newly assembled vehicles.
§ 86.1811-04(f)(2)(i)	Revise to clarify an incorrect rounding procedure.
§ 86.1829-01(2)(i)	Revise to add a waiver provision for evaporative/refueling testing of CNG or LPG vehicles, inadvertently omitted.
§ 86.1835-01(d)	Correct an incorrect reference to paragraph (b) to paragraph (a).
§ 86.1841-01(e)	Revise to clarify that RAFS may be applied only to NLEV vehicles.
§ 86.1845-04(f)(1)	Revise to change an incorrect reference to NMOG to NMHC.
§ 86.1846-01(a)(3)	Revise to add the word “passenger” to “medium-duty passenger vehicles” for clarity.
§ 86.1860-04(g)(2)(ii)	Revise to correct a rounding procedure.
§ 86.1860-04(h)	Revise to clarify that the multipliers for fleet average NO _x specified in (h)(1) apply to the denominator in the equation in paragraph (f)(2) of that section. Provide optional formula necessary to address mathematical problems caused by the value of zero associated with Bin 1.
§ 86.1861-04(a)(5)	Revise to correct an inconsistency with small volume hardship provisions by changing the requirement for 100% compliance in a specific model year to one model year before a deficit can be carried forward.
§ 86.1861-04(b)(1)	Revise formula to replace erroneous + symbol with ×.

II. Geographic Phase-in Area

A. Application Deadline for GPA Standards

Due to the timing of today’s action, we are proposing to extend the application deadline for GPA standards from December 31, 2000 to May 1, 2001. To apply for the GPA standards under § 80.216 (What standards apply to gasoline produced or imported for use in the GPA?), a refiner or importer would have to submit an application in accordance with the provisions of § 80.290 (How does a refiner apply for a sulfur baseline?).

B. How Did We Establish the Geographic Phase-in Area?

In the Tier 2/Gasoline Sulfur final rule (65 FR 6698, February 10, 2000), we established a geographic area in which the low sulfur gasoline program will be phased-in differently than the national program. This program, referred to as the Geographic Phase-In Area (GPA) program, covers seven states in the Rocky Mountains and Upper Great Plains, as well as Alaska. The gasoline sulfur standards and phase-in schedule for the GPA program can be found at §§ 80.216, 80.219, and 80.220. Gasoline produced by any refiner and/or importer can be sold in the GPA provided that the refiner and/or importer registers with us (see § 80.217) and sells gasoline within the GPA consistent with the requirements summarized in the regulations.

As discussed in the Tier 2 final rulemaking (FRM), the GPA program

was established to help enable a smooth transition to low sulfur gasoline nationwide. The need for such a program was based on the competition for engineering and construction resources and the time needed for installation of desulfurization equipment. (See 65 FR 6755–6756)

As described in the preamble to the Tier 2 FRM, states in the GPA were determined based on two criteria: environmental need and gasoline supply. First, we evaluated states based on the environmental need criterion. In defining the GPA, we identified those states that have a somewhat less urgent environmental need in the near term (relative to the 1-hour ozone standard) for ozone precursor reductions¹ and whose emissions are less important with respect to ozone transport. (Tier 2 vehicles operating on higher sulfur gasoline have increased emission rates compared with those operated on 30 ppm, but this effect is partially reversible.) Second, we considered the issue of sufficient gasoline supply, specifically, the relative difficulty of producing or obtaining through product transport (via pipeline, truck, rail or barge) adequate supplies of gasoline which would meet the requirements of the national low sulfur gasoline program. Upon evaluation of these criteria, we identified eight states for the GPA program: Alaska, Colorado, Idaho,

¹ Primarily oxides of nitrogen (NO_x) and volatile organic compounds (VOCs).

Montana, New Mexico, North Dakota, Utah, and Wyoming.

In this same assessment we also acknowledged that there may be counties in other states adjoining these eight states which are solely or predominantly dependent on gasoline produced by the refineries that supply these eight states and which meet the same basic environmental and gasoline supply criteria. As part of the Tier 2 final rule, we committed to conducting additional assessments to identify which counties in these adjoining states should be considered for inclusion in the GPA program.

C. How Do We Propose to Establish the GPA in the Adjoining States?

As part of the Tier 2/Gasoline Sulfur final rule, we included criteria that should be considered in establishing which counties in adjoining states should be included in the GPA program. We designed these criteria to include those counties in adjacent states which receive a majority of their gasoline from the refineries located in the eight states covered by the GPA program. Not including these counties within the GPA program could potentially undermine the basic intent of the GPA program by pressuring refineries in the eight states to supply their markets in the adjoining states with national gasoline, in spite of the existence of the GPA program. It could also have the affect of creating spot gasoline supply shortages and put upward pressure on prices in these counties.

EPA's current gasoline sulfur regulations provide that additional counties or tribal lands in states adjacent to the eight states listed above will be included in the GPA, and gasoline sold there will thus be subject to the GPA standards, if one of the following conditions is met for the area in 1999: (1) Approximately 50 percent or more of the total volume of gasoline, as measured at the terminals and bulk stations, was received from refineries located in the eight GPA states, (2) approximately 50 percent or more of the total volume of gasoline dispensed was received from refineries in the GPA states, or (3) approximately 50 percent or more of the total commercial and private dispensing outlets were supplied by gasoline produced by refineries located in the eight GPA states. See 40 CFR 80.215(a)(2).

To identify additional areas for inclusion in the GPA under these regulations, we worked with interested parties such as petroleum marketers and state governments to obtain information regarding gasoline distribution practices. We identified pipeline and terminal locations and, in several cases, information on GPA and total gasoline dispensed in given states and counties. Using the various types of information provided as a foundation, we then developed a basic methodology to identify counties which rely on GPA refineries for a majority of their gasoline. This methodology involved the following steps:

- Prepare a list of the states adjoining the eight GPA states (10 in total).
- Identify and locate the GPA refineries (those in the eight core GPA states that are not expected to qualify as small businesses under the low sulfur gasoline program).
- Identify the pipelines used by these GPA refineries to transport product to

the terminals which supply gasoline to the adjoining states, and

- Identify all other refineries/terminals which service the adjoining states.

Using this methodology, we developed an initial list of counties in the adjacent states which receive gasoline from the refineries in the eight GPA states. We then identified counties which receive the majority of their gasoline from a given source. To accomplish this task, we mapped counties that fell within a distance range of 100–150 miles from refinery racks and pipeline terminals used by GPA refineries since essentially all gasoline is delivered to private and retail outlets by tanker truck. We used this distance range because our analysis of the information provided to us by the states and petroleum marketers suggested this was a good indicator of a county's primary source of gasoline. We then adjusted this initial list of counties based on two inputs. First, in some cases, county-specific data on the percent of gasoline dispensed that was produced at refineries in the eight GPA states was available. We used these data to include or exclude specific counties from the program. Second, we excluded a county if our analysis indicated that low sulfur gasoline would be available from nearby refineries and terminals which are not linked to the refineries in the eight core GPA states. In places where refineries and terminals are located nearby, we expect that, for economic reasons, retail outlets will obtain the majority of their gasoline at those locations rather than obtaining gasoline that has been transported a much greater distance from a terminal supplied by a refinery in a GPA state.

In summary, under § 80.215(a)(2) of the low sulfur gasoline program regulations, we propose to expand the

boundaries of the GPA to include additional counties and tribal lands in states adjacent to the eight GPA states established under § 80.215(a)(1) of the Tier 2 final rule. To accomplish this, we identified the counties in which we reasonably concluded that approximately 50 percent or more of the gasoline volume dispensed is produced by refineries in the eight GPA states. Specifically, we (1) determined the location of terminals that receive such gasoline, and (2) identified retail outlets in the adjacent states that receive most of their gasoline from these terminals. Next, we excluded certain counties based on specific data which showed that more than half of the gasoline dispensed came from refineries outside the eight GPA states. We then included some additional counties based on specific data which showed that more than half of the gasoline dispensed came from refineries within the eight GPA states. Finally, we excluded some counties identified in our initial analysis based on the identification of nearby terminals that provided an economical source of gasoline from refineries outside the eight GPA states. We have included materials in the docket for today's action that describe in more detail the relevant information regarding the location of terminals and retail outlets for each county.

D. What Are the Results of the GPA Counties Process?

Using the approach described above, we have identified 74 counties in six states that adjoin the GPA which we propose to include in the GPA. These counties are shown in Figure 1 below and are listed in the regulatory text in a new § 80.215.

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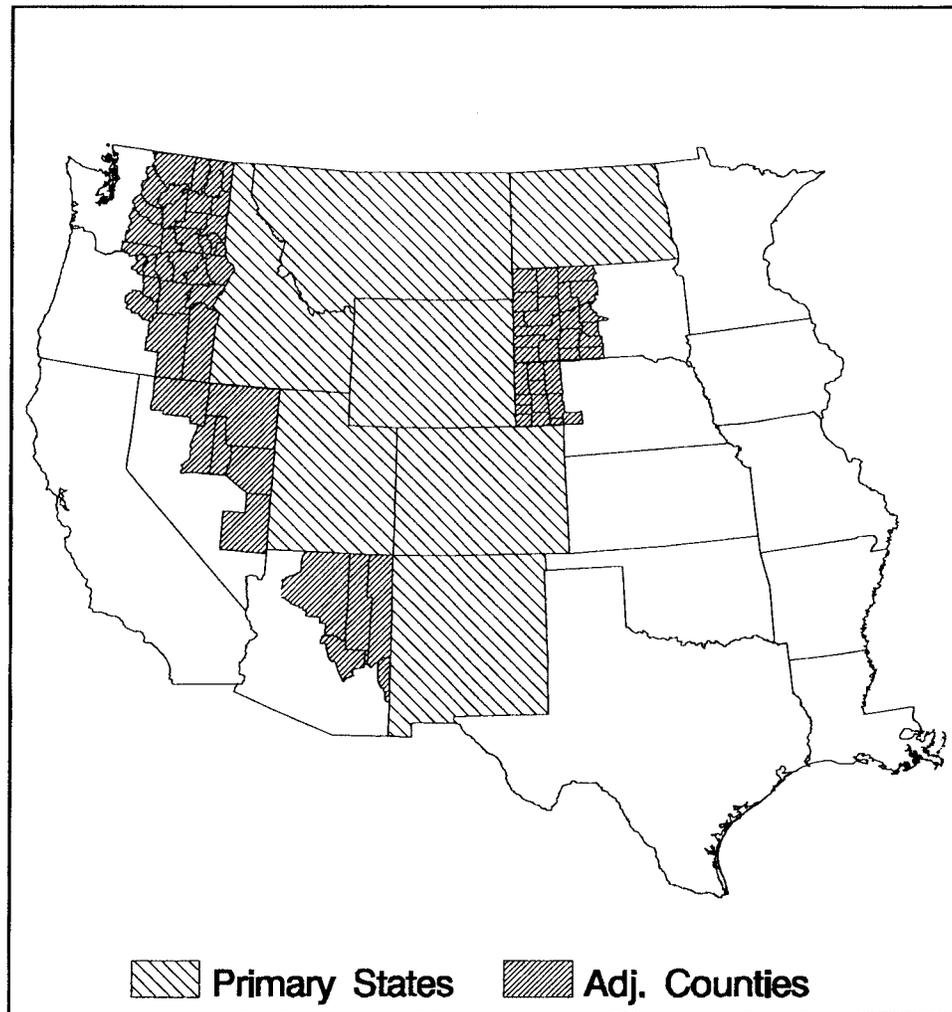


Figure 1. Geographic Phase-in Area

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GPA gasoline sold in these counties would be subject to the requirements in §§ 80.215–80.220, in addition to other applicable requirements in part 80. In our analysis, we concluded that no counties in Minnesota, Texas, Oklahoma, or Kansas need to be included in the GPA. No county in these states meets the criteria in the regulation and with the exception of Minnesota, these four states receive little or no gasoline from the refineries in the eight states now in the GPA program.

The eight core GPA states contain a number of American Indian reservations. We propose to fully include these reservations in the GPA under today's action. The adjacent counties discussed above also contain 25 American Indian reservations. If a reservation is only partly within a GPA state or adjacent county, it would be considered fully in the area for purposes of the GPA program. This is consistent

with the inclusion of entire states or counties in the program.

Overall, the gasoline sold in these adjacent counties and American Indian reservations represents about one percent of U.S. gasoline consumption, which would bring the total gasoline consumption covered by the GPA program to 5.7 percent. Even though we are proposing to revise the GPA program to include these additional counties, the overall emission benefits of the early years of the Tier 2/Gasoline Sulfur program would not be reduced over those described in the final rule. The air quality analysis of the final Tier 2 program was based on the premise that all gasoline produced or used in the eight GPA states would be covered by the GPA program. Thus, GPA gasoline produced at refineries located in the eight GPA states was included in the air quality analysis.

We believe that including the states, counties, and tribal lands described

above would allow the objectives of the GPA program to be achieved.

III. Small Refiners

A. Documentation of Crude Oil Capacity by Foreign Refiners

Section 80.235(c)(2) provides that a refiner's application for small refiner status must contain the total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy. Because foreign refiners do not report their crude oil capacity to the EIA, today's action proposes to modify § 80.235(c)(2) to provide that, in the case of a foreign refiner, the small refiner status application must contain the total crude oil capacity of each refinery as documented by a comparable reputable source, such as a professional publication or trade journal.

Today's proposal would not change the definition of "small refiner" under § 80.225(a), and we are not seeking

comment on any of the provisions of § 80.225(a).

B. Oxygenates Included in Baseline

Section 80.250 provides the equations to be used in determining small refiner sulfur baselines and baseline volumes. This section, however, does not address whether oxygenates added downstream from the small refinery are to be included in the calculations. The current low sulfur gasoline regulations at § 80.295(b) provide that any refiner who, under the RFG and anti-dumping regulations, included oxygenates blended downstream in compliance calculations for 1997–1998, must include this oxygenate in the calculations for sulfur content under § 80.295 for purposes of establishing a baseline for early credit generation. We intended the provisions of § 80.250 under the small refiner program to be consistent with the provisions of § 80.295, since both baselines are intended to reflect current sulfur levels at a refinery and are based on the same calculation. As a result, today's action proposes to modify § 80.250 to require any small refiner who included oxygenates blended downstream in RFG/anti-dumping compliance calculations for 1997–1998, to include this oxygenate for purposes of establishing a sulfur baseline under § 80.250.

IV. Credits and Allotments

A. Baseline Calculations

The current low sulfur gasoline regulations at § 80.205 require the annual refinery or importer average or corporate pool average calculations to be conducted to two decimal places. However, the provisions at §§ 80.250 and 80.295 for calculating a sulfur baseline for purposes of determining small refinery standards and generating early credits and allotments currently do not contain a similar requirement. We intended the provisions for calculating a sulfur baseline to be consistent with the provisions for calculating the refinery or importer annual average sulfur level, including the requirement to conduct the calculations to two decimal places. As a result, today's action proposes to modify §§ 80.250 and 80.295 to require the baseline calculations under these sections to be conducted to two decimal places.

Note, however, that sulfur credits generated under the sulfur program are in units of "ppm-gallons." See § 80.305(c). We interpret § 80.305(c) to require sulfur credits to be rounded to the nearest ppm-gallon. Therefore, in

calculating sulfur credits using the equation in § 80.305(a), the refiner should use the refinery's sulfur baseline value established under § 80.250 or § 80.295, conducted to two decimal places, and the refinery's actual annual average sulfur level calculated under § 80.205, conducted to two decimal places. Once the sulfur credits are calculated, the refiner should round the credits to the nearest ppm-gallon.

B. Refineries That Were Non-Operational in 1997–98

Section 80.290 requires a refiner to submit in its sulfur baseline application the annual average gasoline sulfur baseline for gasoline produced in 1997–1998 for each refinery for which the refiner is applying for a sulfur baseline. The regulations, however, do not address refineries that were shutdown or non-operational during 1997–1998. Today's action proposes that, for such refineries, sulfur data for at least one annual averaging period would be required to establish a sulfur baseline for early credit generation. The refiner's baseline application would have to include the information required under § 80.290(c) for the gasoline produced during each annual averaging period that the refinery was in operation after being reactivated. We will evaluate all of the data submitted by the refiner in determining the appropriate sulfur baseline for the refinery. Where we conclude that the data submitted reasonably reflects current sulfur levels, the refinery's baseline will be determined based on the annual average sulfur content for the most recent annual averaging period that the refinery was in operation. Today's rule would modify §§ 80.290 and 80.295 to clarify these requirements.

C. Foreign Refiners With Approved 1990 Baselines Who Did Not Submit Anti-dumping Compliance Reports to EPA in 1997–1998

To establish a sulfur baseline for purposes of the small refinery standards or generating early sulfur credits, the regulations require refiners to submit to us sulfur baseline data for 1997–1998, including information on each batch of gasoline produced and the batch number assigned to the batch for purposes of compliance with the RFG/anti-dumping regulations. See §§ 80.245(a) and 80.290(c). We may then verify the data in the refiner's sulfur baseline submission by comparing it with the data submitted to us on the refiner's 1997–1998 annual averaging reports. Foreign refiners who do not have an approved individual baseline under the RFG/anti-dumping

regulations, and, therefore, did not submit batch reports to us in 1997–1998, are required to follow the procedures under §§ 80.91 through 80.93 (provisions for establishing an individual anti-dumping baseline) to establish the volume and sulfur content of gasoline that was produced at the foreign refinery and imported into the United States during 1997–1998, for purposes of calculating a sulfur baseline under § 80.250 or § 80.295. See §§ 80.250(b), 80.290(d) and 80.410(b)(1). This is in addition to the other baseline establishment requirements under § 80.245 or § 80.290.

The regulations, however, do not address the situation where a foreign refiner has received an approved individual anti-dumping baseline, but the baseline did not apply for purposes of compliance with the anti-dumping regulations until after the 1998 annual averaging period. Such a refiner would not have submitted any reports to us in 1997–1998. In this situation, we believe it is appropriate for the foreign refinery's baseline to be based on the gasoline produced by the foreign refinery and imported to the United States during the period of time that the refinery was subject to its individual anti-dumping baseline. The sulfur baseline is intended to be a reasonable representation of a refinery's current sulfur level. See 65 FR 6761 (February 10, 2000). We believe that a baseline based on the refinery's post-1998 sulfur data would provide a reasonable representation of the refinery's current sulfur level, and perhaps an even more accurate representation of the refinery's current sulfur level than 1997–1998 data. As a result, today's proposal would require a foreign refiner who has an approved individual anti-dumping baseline that was not in effect in 1997–1998 to submit in its sulfur baseline application under § 80.245 or § 80.290 information and data for the gasoline produced by the refinery during each annual averaging period that the refinery was subject to its individual anti-dumping baseline. EPA would evaluate all of the data submitted by the foreign refiner in determining the appropriate sulfur baseline for the refinery. Where we conclude that the data they give us reasonably reflects current sulfur levels, the refinery's baseline would be determined based on the average sulfur content of gasoline produced by the refinery and imported to the United States during the most recent annual averaging period in which the refinery was subject to its individual anti-dumping baseline.

V. Sampling and Testing

A. Obtaining Test Results Before Gasoline Leaves the Refinery

1. Before January 1, 2004

The current low sulfur gasoline regulations at § 80.330(a)(1) require a refiner to collect a representative sample from each batch of gasoline produced and then to test each sample to determine its sulfur content prior to the gasoline leaving the refinery. The requirements in § 80.330(a)(1) apply beginning on January 1, 2004, or January 1 of the first year of credit or allotment generation, whichever is earlier. Sections 80.330(a)(3) and (a)(4) provide the following exceptions: (1) Parties who collect and test composited samples of conventional gasoline are allowed to continue that practice until January 1, 2004; and (2) parties who are unable to obtain test results prior to the gasoline leaving the refinery are exempt from that requirement if they have an approved in-line blending exemption under § 80.65(f)(4). The current low sulfur gasoline rule, therefore, requires parties who currently test each batch of gasoline by testing a representative sample taken from the certification tank (i.e., who do not test composite samples) to obtain test results prior to the gasoline leaving the facility for purposes of generating early credits or allotments prior to January 1, 2004. The current low sulfur gasoline rule also requires a refiner who produces gasoline using in-line blending equipment to have an in-line blending exemption under § 80.65(f)(4) in order to generate early credits or early allotments.

Under the RFG regulations, refiners who produce RFG by in-line blending are required to obtain an exemption under § 80.65(f)(4). However, refiners who produce conventional gasoline by in-line blending are not required to obtain an exemption under § 80.65(f)(4) for purposes of anti-dumping compliance. The current low sulfur gasoline regulations require these conventional gasoline refiners to apply for and receive an exemption under § 80.65(f)(4) to generate early credits or allotments.

We did not intend for refiners who test every batch of conventional gasoline by testing samples from the certification tank to have more severe testing requirements for purposes of generating early credits or allotments prior to January 1, 2004, than refiners who test composite samples. In addition, we now believe that the requirement under § 80.330(a)(4) to obtain an exemption under § 80.65(f)(4) for in-line blending operations, regarding both RFG and

conventional gasoline, is unnecessary for purposes of generating early credits or allotments. The requirement to obtain test results prior to the gasoline leaving the refinery, and the exemption requirement for in-line blenders, were intended to ensure that the sulfur level of each batch produced was known at the time of shipment. However, since early credit or allotment generation is based on the refinery's annual average sulfur level, credits and allotments are not calculated until the end of the annual averaging period, after the test results for all batches produced during the averaging period are obtained. Therefore, we believe it is unnecessary for refiners to obtain test data prior to the gasoline leaving the refinery for purposes of early credit or allotment generation. Moreover, there are no per-gallon sulfur standards prior to January 1, 2004, which would necessitate knowing the sulfur content of the gasoline prior to its leaving the refinery. As a result, today's action proposes to modify § 80.330 to provide that refiners, including those who produce gasoline using computer-controlled in-line blending equipment, and those who test every batch of conventional gasoline, are not required to obtain test results prior to the gasoline leaving the refinery to generate early credits in 2000–2003 or early allotments in 2003. However, refiners generating early credits or allotments would have to meet the requirements under § 80.330 to obtain a representative sample of each batch of gasoline produced, and conform their sampling methods to the ASTM methodologies set forth in §§ 80.330(b)(1) and (b)(2). Today's rule would also modify the provisions of § 80.410 to allow foreign refiners who generate early sulfur credits in 2000–2003 to ship gasoline from the foreign refinery without having the sulfur content included in the product transfer documents.

2. January 1, 2004 and Beyond

Beginning on January 1, 2004, refiners would have to obtain test results before the gasoline leaves the refinery or import facility. There is an exception to this requirement for refiners who use computerized in-line blending methods. In-line blenders typically route finished gasoline out of the refinery before an entire batch is completed so they are unable to comply with the requirement to test prior to shipment. An automatic sampler takes a large number of small volumes from a batch throughout production and does not have a representative sample until the blending is completed. The current low sulfur gasoline regulations address in-line

blending by providing that refiners who use such in-line blending equipment may meet the requirement to test prior to shipment under the terms of an exemption under § 80.65(f)(4) of the RFG regulations. The basis for this provision is that these exemption holders measure sulfur on-line and therefore know the sulfur concentration of each batch throughout the blending process and can thereby prevent non-complying batches from leaving the refinery.

Currently, all exemption holders are producers of RFG and must meet a wide range of requirements, including the on-line measurement of several properties in addition to sulfur. See § 80.65(f)(4). We do not believe it is practical for in-line blenders of conventional gasoline, with fewer requirements, to meet the requirements designed for RFG blenders, and there is no process under the current low sulfur gasoline regulations for granting a more specialized exemption. As a result, today's action proposes to revise § 80.330(a)(4), which requires all in-line blenders to have an exemption granted under § 80.65(f)(4), to distinguish between conventional gasoline and RFG in-line blenders.

Today's action proposes to remove the requirement that in-line blenders of conventional gasoline obtain an exemption under § 80.65(f)(4) to ship gasoline prior to testing. Instead, today's action would provide that any refiner who uses in-line blending equipment may be exempt from the requirement to obtain test results prior to releasing the gasoline from the refinery, provided that the refiner submits to us the information required for an in-line blending exemption under § 80.65(f)(4)(i)(A) (requiring a detailed description of the in-line blending operation), or the refiner has an in-line blending exemption granted under § 80.65(f)(4). Today's action also proposes to require the refiner to submit any additional information requested by us and to comply with any other requirements that we include in the exemption. For refiners that do not hold an exemption under § 80.65(f)(4), in the absence of notification by us that the exemption has not been approved, or that additional information is required or other requirements have been included in the exemption, the in-line blending exemption would be effective 60 days from our receipt of the refiner's submission of information.

We believe it is important to ensure that the on-line analyzer technology and the refiner's methodology and procedures are sufficient for the gasoline sulfur levels that the refinery

will have when the low sulfur gasoline rule is implemented, for both RFG and conventional gasoline. Generally, we will require the accuracy of the on-line sulfur measurement to be sufficient to identify product segments that violate the applicable per-gallon sulfur standards. The control of an in-line blending system must be sufficient to prevent non-complying gasoline from leaving the refinery. Recordkeeping must be sufficient to allow us to verify the sulfur compliance of each batch and the accuracy and control capability of the in-line blending system.

Currently, on-line sulfur measurement technology is evolving and refiners are evaluating analyzers. In the preamble to the final rule, we indicated that we will be asking in-line blending refiners with exemptions under § 80.65(f)(4) to submit additional information under the sulfur rule, including information on how sulfur is monitored and how streams of gasoline are distributed in the in-blending process. See 65 FR 6807. As indicated above, today's action proposes to include provisions which require in-line blender-refiners, both refiners of conventional gasoline and refiners of RFG under a § 80.65(f)(4) exemption, to submit any additional information requested by us and to comply with other requirements that we include in the exemption. Today's action also proposes that we may modify the requirements of an exemption under § 80.330(a)(4) if we determine that the in-line blending operation does not effectively or adequately control, monitor or document the sulfur content of the gasoline, or if we determine that other circumstances exist which merit modification of the requirements of an exemption, such as advancements in the state-of-the-art for in-line blending measurement which allow for additional control or more accurate monitoring or documentation of sulfur content. Consistent with other provisions of the sulfur rule, today's action provides that a refiner's exemption will be void ab initio if we determine that the refiner provided false or inaccurate information in any submission required for an exemption under § 80.330(a)(4).

B. Sample Retention

1. Limitation on Length of Time to Retain Samples

Section 80.335(a)(2) requires refiners to retain sample portions for the most recent 20 samples collected, or for each sample collected during the most recent 21 day period, whichever is greater. This section specifies the minimum number of batch samples from a

refinery, which once created, must be retained. The regulation does not specifically address the maximum amount of time that any particular sample must be retained. At the time the sulfur rule was promulgated, it was assumed that refineries and importers produce or import a substantial number of batches each year, and, therefore, would accrue the 20 batch minimum in a relatively short time period and be able to dispose of any additional, older samples quickly. We now understand, however, that at least one refiner or importer handles less than a handful of batches each year. Under the current low sulfur gasoline rule, such a refiner or importer may be required to retain batch samples for as long as 10 to 20 years. We did not intend for refiners to be required to retain sulfur samples for that length of time. As a result, today's action proposes to modify § 80.335(a)(2) to place a limit of 90 days on the length of time that any one sample must be retained.

We believe that placing a 90 day maximum on sample retention would provide a reasonable balance between our need to have samples available for enforcement purposes and burden on the industry. Ideally, we would require all samples to be available for at least 90 days. However, we understand that retaining a large number of samples could create an undue burden on parties. Under today's action only parties who produce relatively few batches of gasoline would be required to keep any samples for as long as 90 days. We do not believe this would unduly burden such parties, since they would only need to retain a few samples. Parties who produce a substantial number of batches, for whom sample retention is potentially a greater burden, would be able to discard samples in less than 90 days.

2. Compositing Samples

Section 80.335(a) provides that beginning on January 1, 2004, or January 1 of the first year of allotment or credit generation, whichever is earlier, a refiner or importer must retain representative samples of the gasoline batch samples analyzed under the requirements of § 80.330. Under 80.330(a)(3), composited samples are treated as single batches of gasoline and are allowed for sulfur testing purposes prior to January 1, 2004. Today's action proposes to modify § 80.335 to clarify that, prior to January 1, 2004, refiners who analyze composited samples would be required to retain portions of the composited samples, and not portions of samples of each batch comprising the composited samples.

3. Sample Retention for Reformulated Blendstocks for Oxygenate Blending

Section 80.335 describes the sample retention requirements for refiners or importers. However, this section does not address how reformulated blendstock for oxygenate blending (RBOB) samples should be considered. Section 80.69(a)(2) of the RFG regulations requires refiners to conduct testing on RBOB by adding the specified type and amount of oxygenate to a representative sample of the RBOB, and determining the properties and characteristics of the resulting gasoline (i.e., a "handblend"). Section 80.335(a) requires refiners to collect a representative portion of each sample analyzed and retain such sample portions as specified in § 80.335(a)(2). We interpret § 80.335(a) to require refiners to retain samples of the RBOB batches and samples of the ethanol used to conduct the handblend testing, rather than samples of the actual handblend. Refiners, therefore, would not be required to create additional volumes of the handblend samples for purposes of fulfilling the sample retention requirements of § 80.335. Having the RBOB and accompanying ethanol samples available to us would allow us to combine samples of the actual RBOB and ethanol used in the handblend. This would enable us to determine whether the refiner blended the handblend with proper amounts of the components and properly conducted the testing. Today's action proposes to clarify § 80.335 with regard to the sample retention requirement for RBOB.

VI. Changes to Vehicle Compliance Regulations

The table in Section I, above, lists minor changes which we propose to make to Subpart S of 40 CFR Part 86 which contains the certification compliance regulations for new motor vehicles. The changes would correct some errors and inconsistencies and add some clarification. We believe these changes are minor and technical in nature, and would be made as a direct final rule.

VII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any

regulatory action that is likely to result in a rule that may:

- 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;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this proposed rule would not be a "significant regulatory action."

B. Regulatory Flexibility

We have determined that this proposal would not have a significant impact on a substantial number of small entities, and that it is therefore not necessary to prepare a regulatory flexibility analysis in conjunction with this direct final rule. Because today's rule would correct, amend, and revise certain provisions of the December 1999 regulations for the control of air pollution from new motor vehicles and for low sulfur gasoline, regulated entities would find it easier to comply with the requirements of the Tier 2/Gasoline sulfur program. Today's rule also identifies counties for inclusion in the GPA, which would result in additional flexibility for refiners providing gasoline to those areas.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and implementing regulations, 5 CFR Part 1320, do not apply to this action as it does not involve the collection of information as defined therein.

D. Intergovernmental Relations

1. 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 for any single 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 that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposal contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule would not impose any enforceable duties on any of these governmental entities. Nothing in the rule would significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than \$100 million to the private sector in any single year. This action would have the net effect of correcting, amending, and revising certain provisions of the Tier 2/Gasoline Sulfur program, and identifying counties for inclusion in the GPA. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

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

On January 1, 2001, Executive Order 13084 was superseded by Executive Order 13175. However, this proposed rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084.

If EPA receives adverse comment on one or more distinct amendments, paragraphs, or sections of this proposal, we will publish a timely withdrawal in the **Federal Register** indicating which provisions of the direct final rule are being withdrawn due to adverse comment.

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, and 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 officials 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 rule would not uniquely affect the communities of American Indian tribal governments since the motor vehicle emissions, motor vehicle fuel, and other related requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule would not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. The effect of today's rule is no more significant than the Tier 2/Gasoline Sulfur program for tribes within the original GPA; under today's action, gasoline sold in certain tribal lands will be subject to the GPA standards rather than the otherwise applicable gasoline sulfur standards until 2007. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Thus, our conclusions regarding the impacts from the implementation of today's rule discussed in the other sections of this preamble are equally applicable to the

communities of American Indian tribal governments.

As described elsewhere in this proposal, the overall emission benefits of the early years of the Tier 2/Gasoline Sulfur program are not reduced over those described in the final rule. The air quality analysis of the final Tier 2 program was based on the premise that all gasoline produced or used in the eight GPA states would be covered by the GPA program. Thus, GPA gasoline produced at refineries located in the eight GPA states was included in the air quality analysis.

3. Executive Order 13132 (Federalism)

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires us 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.

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (i.e., the rules would 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). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and Federally protected interests within the agency's area of regulatory responsibility.

This proposal does not have federalism implications. It would 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 proposal would correct, amend, and revise certain provisions of an earlier rule that adopted national emissions standards for certain categories of motor vehicles and national standards to control gasoline sulfur, and proposes additional areas to be subject to the GPA program for low sulfur gasoline. The requirements of the rule would be enforced by the federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, we did consult with State and local officials in developing this proposal.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), section 12(d) of Public Law 104-113, directs us to use voluntary consensus standards in our regulatory activities unless it 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) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when the we decide not to

use available and applicable voluntary consensus standards.

This proposal references technical standards adopted by us through previous rulemakings. No new technical standards would be established under today's proposal. The standards referenced in today's proposal involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's proposal are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's proposal are government-unique standards that were developed by us through previous rulemakings. These standards have served our emissions control goals well since their implementation and have been well accepted by industry. We are not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, we are using the existing EPA-developed standards found in 40 CFR Part 86 for the measurement of motor vehicle emissions.

F. Executive Order 13045: Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 F.R. 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under Executive Order 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, section 5-501 of the Order directs us to 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 us.

This proposal is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this proposal does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

VIII. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls set in today's proposal can be found in sections 202, 206, 207, 208, and 301 of the Clean Air Act (CAA), as amended, 42 U.S.C. sections 7521, 7525, 7541, 7542 and 7601.

Statutory authority for the fuel controls set in today's proposal comes from section 211(c) of the CAA (42 U.S.C., section 7545(c)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair

emission control equipment. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's proposal, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects*40 CFR Part 80*

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: January 19, 2001.

Carol M. Browner,

Administrator.

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