



# Federal Register

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**Tuesday,  
January 4, 2005**

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**Part VI**

## **Environmental Protection Agency**

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**40 CFR Part 80**

**Control of Emissions of Hazardous Air  
Pollutants From Mobile Sources: Default  
Baseline Revision; Proposed Rules**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[OAR-2002-0042; FRL-7856-9]

RIN 2060-AJ97

**Control of Emissions of Hazardous Air Pollutants From Mobile Sources: Default Baseline Revision**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes revised default baseline values for reformulated gasoline and conventional gasoline under EPA's mobile source air toxics (MSAT) program. EPA's final rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources (66 FR 17230, March 29, 2001), requires that the annual average toxic performance of gasoline must be at least as clean as the average performance of the gasoline produced or imported during the period 1998-2000 (known as the "baseline period"). The baseline performance is determined separately for each refinery and importer, and the rule established default toxics baseline values for refineries that could not develop individual toxics baselines. The default toxics baseline values are based on the national average performance of gasoline during the baseline period. However, at the time of the final rule, gasoline toxics performance data were not yet available for the year 2000. Therefore, the final rule included regulations directing the EPA to revise the default toxics baseline values in the rule to reflect the entire 1998-2000 baseline period once the appropriate data became available. With this action, EPA is proposing to revise the default toxics baseline values for refineries and importers to reflect the national average toxics performance of gasoline during 1998-2000.

**DATES:** *Comments:* Send written comments on this proposed rule by February 3, 2005.

*Hearings:* If anyone contacts the EPA requesting to speak at a public hearing by January 24, 2005, a public hearing will be held on February 3, 2005. If a public hearing is requested, it will be held at 10 a.m. at the EPA Office Building, 2000 Traverwood, Ann Arbor,

MI 48105, or at an alternate site nearby. To request to speak at a public hearing, send a request to the contact in **FOR FURTHER INFORMATION CONTACT.**

See Section III for more information.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2002-0042, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: [brunner.christine@epa.gov](mailto:brunner.christine@epa.gov).

4. Fax: (734) 214-4816.

5. Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Ave., NW., Room B108, Mail Code 6102T, Washington, DC 20460, Attention Docket ID No. OAR-2002-0042. Please include a total of 2 copies.

6. Hand Delivery: EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OAR-2002-0042. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, [regulations.gov](http://www.epa.gov/regulations.gov), or e-mail. The EPA EDOCKET and the Federal [regulations.gov](http://www.epa.gov/regulations.gov) Web sites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or [regulations.gov](http://www.epa.gov/regulations.gov), your e-mail address will be automatically

captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102).

*Docket:* All documents in the docket are listed in the EDOCKET index at <http://www.epa.gov/edocket>. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility and the Public Reading Room are open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Air Docket is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Christine Brunner, OTAQ, ASD Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105, telephone number: (734) 214-4287; fax number: (734) 214-4816; e-mail address: [brunner.christine@epa.gov](mailto:brunner.christine@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

Entities potentially affected by this proposed action include those involved with the production, distribution and sale of gasoline motor fuel. Regulated categories and entities include:

Category	NAICS <sup>1</sup> codes	SIC <sup>2</sup> codes	Examples of potentially regulated entities
Industry .....	324110	2911	Petroleum Refiners.
Industry .....	422710	5171	Gasoline or Diesel Marketers and Distributors.
	422720	5172	
Industry .....	484220	4212	Gasoline or Diesel Carriers.
	484230	4213	

<sup>1</sup> North American Industry Classification System (NAICS)

<sup>2</sup> Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this proposed action. Other types of entities not listed in the table could also be affected. To decide whether your organization might be affected by this proposed action, you should carefully examine today's notice and the existing regulations in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

#### B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

3. *Docket Copying Costs.* A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

#### Outline of This Preamble

- I. Background
- II. Proposed Action
  - A. Summary
  - B. Methodology
  - C. Effective Date
  - D. Correction
  - E. Environmental and Economic Impact
- III. Public Participation
- IV. Statutory and Executive Order Reviews
  - A. Executive Order 12866: Regulatory Planning and Review
  - B. Paperwork Reduction Act
  - C. Regulatory Flexibility Act
  - D. Unfunded Mandates Reform Act
  - E. Executive Order 13132: Federalism
  - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
  - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
  - H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use
  - I. National Technology Transfer and Advancement Act
- V. Statutory Provisions and Legal Authority

#### I. Background

The regulations promulgated in the final rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources,<sup>1</sup> also known as the Mobile Source Air Toxics (MSAT) rule, require that the annual average toxics

performance of gasoline produced or imported beginning in 2002 must be at least as clean as the average performance of the gasoline produced or imported during the three-year period 1998–2000 (40 CFR part 80, subpart J). The period 1998–2000 is called the baseline period. The average 1998–2000 toxics performance level, or baseline, is determined separately for each refinery and importer, except for those who comply with the anti-dumping requirements for conventional gasoline<sup>2</sup> on an aggregate basis, in which case the MSAT requirements for conventional gasoline must be met on the same aggregate basis. Toxics performance is determined separately for reformulated gasoline (RFG) and conventional gasoline (CG), in the same manner as the toxics determinations required by the reformulated gasoline<sup>3</sup> and conventional gasoline rules. An MSAT baseline volume is associated with each unique individual MSAT baseline value of a refinery or importer. The MSAT baseline volume reflects the average annual volume of such gasoline produced or imported during the baseline period.

To establish a unique individual MSAT baseline, EPA requires each refiner and importer to submit documentation supporting the determination of the baseline. Most refiners and many importers in business during the baseline period had sufficient data to establish an individual baseline for their refineries. However, a few refiners and importers did not have sufficient refinery production or imports during that period, and thus, based on the criteria specified in §§ 80.855(a) and 80.915(a), cannot establish a unique individual MSAT baseline. Refiners and importers without a unique individual MSAT baseline have the default baseline provided in § 80.855(b)(1) as their individual MSAT baseline. As discussed in the rule, the default baseline is based on the average toxics performance of gasoline produced and imported for use in the United States during the baseline period. At the time

<sup>2</sup> 40 CFR part 80, subpart E.

<sup>3</sup> 40 CFR part 80, subpart D.

<sup>1</sup> 66 FR 17230, March 29, 2001.

of the rulemaking, year 2000 batch data from refiners and importers were not available, so EPA included in the regulations an estimate of the default baseline, as well as a requirement at § 80.855(b)(2) that EPA update this estimate to reflect the gasoline produced during the entire baseline period, including the year 2000. This proposed rule would complete that requirement.

**II. Proposed Action**

**A. Summary**

EPA is proposing to update the MSAT default compliance baseline values, or “default baseline values,” in § 80.855(b)(1). For RFG, the proposed revised value is 26.78 percent reduction. For CG, the proposed revised value is 97.38 mg/mile. These revised values include the appropriate compliance margins. These values reflect the average nationwide<sup>4</sup> toxics performance of gasoline produced and imported during the period 1998–2000. The revised default toxics values were calculated using 1998, 1999, and 2000 toxics performance data that refiners and importers submitted to EPA under the RFG and anti-dumping programs. This toxics performance data was submitted for each batch of gasoline produced or imported. Batch toxics performance data most closely represents actual gasoline produced during the baseline period because the toxics performance is calculated from the batch’s own set of fuel parameter values. We are also proposing that the revised values would be effective beginning with the 2005 annual

compliance period. We believe that this start date provides affected parties sufficient lead time to prepare for the changes proposed today, yet does not further delay any environmental benefits associated with the baseline value revisions.

**B. Methodology**

EPA considered two approaches for determining the revised MSAT default baseline values. Both used data submitted to EPA by refiners and importers under the RFG and anti-dumping programs. The first approach is the “Fuel Parameter” method. The volume-weighted average is calculated for fuel parameters values, each season, and the fuel parameter average is then used to determine the average toxics emissions. This is done separately for RFG and CG, for each baseline year for each refiner or importer. The Phase 2 version of the Complex Model<sup>5</sup> is used to calculate emissions. We then calculated the overall annual average toxics performance values for RFG and CG by volume-weighting the seasonal refiner and importer toxics performance values.

The second approach is the “Batch Performance” method. The toxics performance of each batch of CG and RFG is calculated based on each batch’s fuel parameters. The batch by batch results are used to calculate the overall volume weighted average toxics performance for CG and RFG for the baseline period. The Batch Performance method is similar to the methodology used to develop the current default baseline values.

The national average 1998–2000 toxics performance determined by the two methods differs, as shown in Table 1. The RFG value determined by the Fuel Parameter method is slightly more stringent than that determined by the Batch Performance method. The RFG value by both methods is more stringent than the value currently in effect, as would be expected by the inclusion of year 2000 data. For the CG analysis, the results were mixed: compared to the value contained in the final rule, the Fuel Parameter method resulted in a more stringent value, and the Batch Performance method in a less stringent value. There are at least two reasons for this variation in the CG results. First, the CG default baseline contained in the final rule was based on batch information available just prior to the final rule (the best available data at the time). However, during the process of approving individual baselines, many errors in the submitted CG data were discovered. The resulting data set upon which the analyses for this proposal were based is a much different data set than that upon which the value contained in the final rule was determined, even apart from the inclusion of year 2000 data. Evaluation of oxygen use under the two methods (Fuel Parameter and Batch) is the second likely cause of discrepancy between this analysis and the final rule analysis. Averaging oxygen use, and accounting for different oxygenates, across all batches is probably less certain than accounting for oxygen use on a per batch basis.

TABLE 1.—MSAT DEFAULT BASELINE VALUES

		Final rule (66 FR 17230, 3/29/01)	Revised*	
			Fuel parameter basis	Batch performance basis
RFG (% reduction) ....	1998–2000 Average .....	26.01 .....	28.80	27.48
	Default baseline value** .....	26.71 <sup>6</sup> (correct value = 25.31) .....	28.10	26.78
CG (mg/mile) .....	1998–2000 Average .....	92.14 .....	90.89	94.88
	Default Baseline Value** .....	94.64 .....	93.39	97.38

\* “Revised” refers to new values determined from data from the period 1998–2000

\*\* Includes compliance margin of 0.7 % reduction for RFG, and 2.5 mg/mile for CG, per 80.915(h)

The Batch Performance approach for calculating the average toxics

performance during 1998–2000 is a more appropriate methodology than the Fuel Parameter approach. The Batch

Performance method better reflects and accounts for the actual gasoline (based on composition) that was in the market

<sup>4</sup> Excluding gasoline used in California and in other specified situations. See 40 CFR 80.820.

<sup>5</sup> 40 CFR 80.45.

<sup>6</sup> The 2001 final rule, at 80.915(h), listed the compliance margin for reformulated gasoline as –0.75. However, when EPA calculated the default baseline for RFG, it incorrectly added a value of 0.7 to the estimated average 1998–1999 gasoline

toxics performance of 26.01% reduction (instead of subtracting 0.7). See MSAT Technical Support Document at p.157. Therefore, EPA incorrectly listed the default baseline value for RFG in the March 29, 2001 final rule as a 26.71% reduction (25.01 + 0.7). The correct estimated value for inclusion in the final MSAT rule should have been a 25.31% reduction (26.01 – 0.7). As discussed

below, today’s action corrects this mistake for the 2002–2004 compliance year. The average reformulated gasoline toxics performance calculated using data from the baseline period 1998 through 2000 is a 27.48% reduction. Applying the compliance margin to this value results in a reformulated gasoline default compliance baseline value of 26.78% reduction (27.48 – 0.7).

during 1998–2000. Also, the Batch Performance method most closely resembles how refiners and importers determine compliance—on a batch by batch basis—by analyzing each batch and then determining the average toxics performance of the batches. This batch by batch calculation also avoids introduction of inaccuracy into the averaging process from the non-linear nature of the emissions model. Thus EPA is proposing that the revised MSAT default baseline values be based on the Batch Performance method.

### C. Effective Date

EPA is proposing that the revised MSAT default baseline values proposed today be effective beginning with the 2005 annual compliance period. The CG revised default baseline value requires no consideration of lead time or feasibility as it is less stringent than the current value. The proposed revised RFG default baseline value is slightly more stringent than the current value, and does require lead time and feasibility considerations. While it was evident from our initial rulemaking that there would be an adjustment to the default baseline values, EPA believes it is reasonable to provide an appropriate amount of lead time for affected parties to consider and plan for compliance with the new standards. This primarily affects those parties subject to the default RFG baseline who are planning to produce or import RFG during 2005. EPA does not expect that those parties subject to the RFG default baseline who are not planning to produce or import RFG prior to 2006 will be significantly impacted by the revised value proposed today. Flexibilities provided by the MSAT program, such as deficit and credit carryover, are available to affected parties should they encounter compliance difficulties with the proposed revised standard in 2005.

As discussed, the increase in stringency of the MSAT default RFG standard is not unexpected, as the RFG toxics performance standard increased from 16.5% reduction for 1998 and 1999 to 21.5% reduction in 2000. Refiners and importers subject to the MSAT RFG default baseline could look to the RFG Survey<sup>7</sup> results for the periods 1998,

1999, and 2000 to estimate the likely change in the RFG default baseline value when year 2000 data was included. The year 2000 average RFG toxics performance calculated by the Batch Performance method is very close to the corresponding value estimated using the RFG survey data (29.1 and 30.1 % reduction, respectively). EPA believes the magnitude of the change in the RFG default baseline value is small enough that it can be addressed by small modifications in fuel composition during the course of the year.

Compliance with the gasoline sulfur requirements (§ 80.195) will further assist compliance with the proposed slightly more stringent RFG MSAT default baseline standard. Beginning in 2005, the gasoline sulfur regulations require that a refinery's average sulfur (across all its gasoline) not exceed 30 ppm, with a 300 ppm per-gallon cap in 2005 and an 80 ppm per-gallon cap beginning in 2006. During the MSAT baseline period, RFG sulfur averaged less than 200 ppm. Most affected parties will have to significantly reduce their gasoline pool sulfur levels through production or import of appropriate batches. In the Complex Model, changes in sulfur levels have a directionally consistent impact on toxics performance; a reduction in sulfur reduces toxics emissions, or in the case of RFG, increases the percent reduction in toxics emissions.

Further, EPA believes that delaying the implementation of the revised RFG default baseline reduces the small decrease in RFG toxic emissions that results from the revision proposed today. Thus, EPA believes that implementing the revised default baseline values beginning in 2005 is feasible and appropriate.

### D. Correction

Today's proposed action would also correct, for calendar years 2002, 2003, and 2004, the RFG default MSAT value listed in the March 29, 2001, final rule. In that action, the compliance margin was incorrectly applied to the RFG average toxics reduction estimated for the period 1998–1999. We continue to believe that this compliance margin is appropriate based on the reasoning provided in the 2001 final rule. Thus, in addition to proposing the default toxics baseline that would apply beginning in 2005, today's action would also correct the RFG default toxics baseline applicable to 2002, 2003 and 2004, gasoline, by appropriately applying the

estimates of the average toxics performance of gasoline in a given survey area based on the survey information.

compliance margin to the RFG average toxics reduction estimated in the 2001 final rule. Subtracting the 0.7 compliance margin from the 26.01% reduction performance estimate produces an RFG default baseline of 25.31% reduction.<sup>8</sup> Accordingly, for the 2002, 2003, and 2004, compliance periods, the default toxics baseline for RFG is a 25.31% reduction.

### E. Environmental and Economic Impact

EPA included a discussion of the environmental and economic impacts of the MSAT rule in the March 2001 preamble to the rule. Today's proposal to update the default baseline values would not significantly change the environmental or economic analyses discussed in the final MSAT rule. However, EPA expects that there are likely minor impacts. First, because the proposed RFG default baseline value becomes slightly more stringent, there may be some cost to affected parties to comply with this revised value over the current value. However, as discussed above, it was very clear from the final rule that the default values would be revised. Because of the increase in the RFG toxics performance standard in 2000, and the fact that the reason for the revision to the MSAT default baseline was primarily to include year 2000 data, one could reasonably expect that the revised RFG value would be more stringent than that included in the final MSAT rule. With this slight increase in stringency will likely come a small increase in environmental benefits compared to the current standard. However, it is difficult to estimate the full impact (both economic and environmental) since most of those subject to the MSAT default RFG baseline do not import or produce RFG on a regular basis or do not produce significant quantities of RFG or may never produce RFG. Based on 2003 compliance reports, we estimate that about 40% of the RFG suppliers (refiners and importers) are subject to the MSAT default baseline, and none of those are considered small refiners or importers. Additionally, we estimate that these entities supplied less than 10 percent of the RFG volume.

The change in the CG default baseline value may result in an increase in emissions compared to the current standard. Given the discrepancy in CG data quality between the data used in the baseline calculation in the final rule and in this proposal, it is difficult to fully determine the environmental impact of this change. Most of those subject to the CG default baseline are

<sup>7</sup> The RFG Survey Association is an association of refiners, importers and blenders that performs surveys, or sampling, of reformulated gasoline at the retail level. This sampling is required under the reformulated gasoline regulations. These surveys collect and analyze samples from retail gasoline stations in the major cities where RFG is required. Each individual survey is conducted during a one-week period. Currently, over 150 surveys are conducted each year in federal RFG areas, with a total of more than 10,000 samples collected and analyzed. On the EPA website, EPA publishes

<sup>8</sup> MSAT Technical Support Document, p.157.

importers or blenders who do not produce or import large quantities of CG and/or who produce or import on an irregular basis. The bulk of the CG volume is subject to an individual MSAT standard. Thus, for the total pool of CG, the environmental effect of this change in the default baseline is likely to be small.

### III. Public Participation

We request comments on all aspects of this proposal. The comment period for this proposed rule will end 30 days after publication in the **Federal Register**.

If you would like to speak at a public hearing on this proposed rule, please contact us within 20 days of publication of the proposal in the **Federal Register**, as described above in **DATES**. If a request to speak at a public hearing is received, we will hold the hearing at least 30 days after publication of the proposal in the **Federal Register**. The public hearing would start at 10 a.m. local time at the EPA Office Building, 2000 Traverwood, Ann Arbor, MI 48105, or at an alternate site nearby.

To contact us for updated information about the possibility of a public hearing, please see the **FOR FURTHER INFORMATION CONTACT** section.

If you would like to present testimony at a public hearing, we ask that you notify the contact person listed above at least ten days beforehand. You should estimate the time you will need for your presentation and identify any needed audio/visual equipment. We suggest that you bring copies of your statement or other material for the EPA panel and the audience. It would also be helpful if you send us a copy of your statement or other materials before the hearing.

We will arrange for a written transcript of the hearing and keep the official record of the hearing open for 30 days to allow for the public to supplement the record. You may make arrangements for copies of the transcript directly with the court reporter.

### IV. Statutory and Executive Order Reviews

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

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or

adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

#### B. Paperwork Reduction Act

Because the amendments in this proposed rule would not change the information collection requirements of the underlying MSAT rule, this action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* 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 EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

#### C. Regulatory Flexibility Act

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 petroleum refining company with fewer than 1500 employees or a petroleum wholesaler or broker with fewer than 100 employees, based on the North American Industrial Classification System (NAICS); (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 proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

We have determined that approximately 25 refiners and importers meet the NAICS criteria described above and are subject to the MSAT default baseline for their reformulated gasoline. None of these entities produced or imported RFG during the MSAT baseline period or since then. Based on our knowledge of these refiners and importers, in fact, we would not expect any of them to produce or import RFG in the near future. Thus, we do not expect the revised RFG MSAT default value to adversely impact these small entities compared to the current RFG MSAT default value. In the event these refiners and importers choose to produce or import RFG, they will have had sufficient notice of the standard. Additionally, because the toxics determination is a function of many fuel parameters, as well as the volumes of the batches, the slight increase in stringency of the RFG MSAT default value should not pose a significant burden toward achieving compliance.

Although this proposed rule would not have a significant economic impact on a substantial number of small entities, the impact of this proposed rule will be reduced for small entities by various provisions in the MSAT rule. The MSAT rule contains deficit and credit carryforward provisions which provide compliance flexibility to regulated entities. Under these provisions, refiners and importers are allowed to carry a toxics deficit (indicating noncompliance with their MSAT standard) forward for one year, using credits generated in the prior or post years to make up the deficit. The underlying rule also includes a compliance margin to account for

ordinary variations in fuel quality. Because RFG toxics performance is a function of many fuel parameters, as well as the volumes of the batches, the slight increase (about 6%) in the stringency of the RFG MSAT default value should not pose a significant burden toward achieving compliance. Beginning in 2005, the requirement that a refiner's or importer's average gasoline sulfur level not exceed 30 ppm should provide additional assistance to regulated entities in complying with the MSAT requirements, since sulfur reductions also decrease toxics emissions, as determined by the Complex Model.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. 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, EPA 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 an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA 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 EPA 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 EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it 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 EPA regulatory proposals with significant Federal intergovernmental mandates, and

informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule does not contain a federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Today's action would simply modify the original rule in a limited manner, and would not significantly change the original rule. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has also determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments, because it would be applicable only to parties which produce or import gasoline.

#### *E. 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 proposed rule does not have federalism implications. It 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. The rule would amend existing regulatory provisions applicable only to producers and importers of gasoline and would not alter State authority to regulate these entities. The amendments will impose no direct costs on State or local governments. Thus, Executive Order 13132 does not apply to this proposed rule.

#### *F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of

regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The rule would amend existing regulatory provisions applicable only to producers and importers of gasoline and will impose no direct costs on State or local governments. Thus, Executive Order 13175 does not apply to this proposed rule.

#### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

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 Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has 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.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Nevertheless, as we explained in the preamble to the final MSAT rule in March 2001, we believe it is important to develop a better understanding of the effects on public health, including children's health. EPA is considering children's health issues in our Technical Analysis Plan.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its 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 EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

### **V. Statutory Provisions and Legal Authority**

The statutory authority for the fuels controls in today's proposed rule can be found in sections 202 and 211(c) of the Clean Air Act (CAA), as amended. Support for any procedural and enforcement-related aspects of the fuel controls in today's proposed rule, including recordkeeping requirements, comes from sections 114(a) and 301(a) of the CAA.

#### **List of Subjects in 40 CFR Part 80**

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

Dated: December 22, 2004.

**Michael O. Leavitt,**  
*Administrator.*

For the reasons set forth in the preamble, 40 CFR part 80 is proposed to be amended as set forth below:

### **PART 80—REGULATION OF FUELS AND FUEL ADDITIVES**

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

**Authority:** 42 U.S.C. 7414, 7545, and 7601(a).

2. Section 80.855 is amended by revising paragraphs (b)(1)(i) and (b)(1)(ii) to read as follows:

#### **§ 80.855 What is the compliance baseline for refineries or importers with insufficient data?**

\* \* \* \* \*

(b)(1) \* \* \*

(i) For conventional gasoline, prior to January 1, 2005, 94.64 mg/mile; starting January 1, 2005, 97.38 mg/mile.

(ii) For reformulated gasoline, prior to January 1, 2005, 25.31 percent reduction from statutory baseline; starting January 1, 2005, 26.78 percent reduction from statutory baseline.

\* \* \* \* \*

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### **ENVIRONMENTAL PROTECTION AGENCY**

#### **40 CFR Part 80**

[OAR-2003-0010; FRL-7857-1]

**RIN 2060-AK02**

#### **Regulation of Fuels and Fuel Additives: Modification of Anti-Dumping Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and U.S. Territories**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Today's action proposes to allow refiners and importers who produce or import conventional gasoline for use in Alaska, Hawaii, the Commonwealth of Puerto Rico and the Virgin Islands to change the way that they calculate emissions from such gasoline for purposes of calculating their conventional gasoline anti-dumping baselines and evaluating annual average emissions. Specifically, for gasoline sold in these areas, refiners and importers could elect to modify their baselines to replace the anti-dumping statutory baseline with the single seasonal statutory baseline that is most appropriate to the regional climate, and to use the seasonal component of the Complex Model that is most appropriate to the regional climate to calculate individual baselines and annual average emissions. This action would allow refiners and importers to petition EPA to use the summer statutory baseline and the summer Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline produced or imported for use in Hawaii, Puerto Rico and the Virgin Islands and would allow

refiners and importers to petition EPA to use the winter statutory baseline and the winter Complex Model for all anti-dumping baseline and compliance calculations for conventional gasoline produced or imported for use in Alaska. We are proposing these actions to address certain inconsistencies in the RFG program's anti-dumping provisions which may have significant unintended negative impacts on refiners and importers who produce or import gasoline for these areas. Today's action would also extend similar seasonal baseline and compliance modifications to the provisions applicable to conventional gasoline under Gasoline Toxics, also known as the Mobile Source Air Toxics rule, or MSAT.

**DATES:** Comments must be received on or before February 3, 2005.

**ADDRESSES:** Submit your comments, identified by Docket ID No. OAR-2003-0010 by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

2. Agency Web site: <http://www.epa.gov/edocket>. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

3. E-mail: <http://www.epa.gov/edocket>, Attention Docket ID No. OAR-2003-0010.

4. Mail: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6406J, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.

5. Hand Delivery: EPA Docket Center, Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B102, Mail Code 6102T, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

**Instructions:** Direct your comments to Docket ID No. OAR-2003-0010. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.epa.gov/edocket>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information