

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Part 80**

[AMS-FRL-5267-5]

**Regulation of Fuels and Fuel Additives: Administrative Stay of Certain Standards for Reformulated and Conventional Gasoline**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; administrative stay.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is issuing a three-month administrative stay of certain portions of the anti-dumping regulations for conventional gasoline (gasoline not certified as reformulated gasoline) which were promulgated in December 1993. Specifically, today's action stays criteria of the existing requirements for obtaining an individual refinery baseline adjustment due to the production of JP-4 jet fuel in 1990 and criteria of the conventional gasoline provisions concerning refiners that are no longer able to obtain extremely sweet crude which was available in 1990 and was used to develop the 1990 individual baseline. In a related Notice of Proposed Rulemaking, which is published elsewhere in this issue of the **Federal Register**, EPA is proposing new baseline adjustment criteria for these two cases. In both of these cases, the stay only applies to those refiners that meet the new proposed criteria for a baseline adjustment.

**EFFECTIVE DATE:** This final rule is effective August 4, 1995.

**ADDRESSES:** Materials relevant to the reformulated gasoline Final Rule are contained in Public Dockets A-91-02 and A-92-12. Materials relevant to the Notice of Proposed Rule on baseline adjustments are contained in Public Docket A-95-03. These dockets are located at Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The docket may be inspected from 8:00 a.m. until 5:00 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

**FOR FURTHER INFORMATION CONTACT:** Carol Menninga, U.S. EPA (RDSD-12), Regulation Development and Support Division, 2565 Plymouth Rd., Ann Arbor, MI 48105. Telephone (313) 668-4480. To request copies of this document, contact Delores Frank, U.S. EPA (RDSD-12), Regulation Development and Support Division,

2565 Plymouth Rd., Ann Arbor, MI 48105. Telephone (313) 668-4295.

**SUPPLEMENTARY INFORMATION:****I. Electronic Copies of Rulemaking Documents Through the Technology Transfer Network Bulletin Board System (TTNBBS)**

A copy of this document is available electronically on the EPA's Office of Air Quality Planning and Standards (OAQPS) Technology Transfer Network Bulletin Board System (TTNBBS). The service is free of charge, except for the cost of the phone call. The TTNBBS can be accessed with a dial-in phone line and a high-speed modem per the following information:

TTN BBS: 919-541-5742  
(1200-14400 bps, no parity, 8 data bits, 1 stop bit)

Voice Help-line: 919-541-5384

Accessible via Internet: TELNET  
tnbbs.rtpnc.epa.gov

Off-line: Mondays from 8:00 AM to 12:00 Noon ET

A user who has not called TTN previously will first be required to answer some basic informational questions for registration purposes. After completing the registration process, proceed through the following menu choices from the Top Menu to access information on this rulemaking.

<T> GATEWAY TO TTN TECHNICAL AREAS (Bulletin Boards)  
<M> OMS—Mobile Sources Information  
<K> Rulemaking and Reporting  
<3> Fuels  
<9> File Area #9 . . . Reformulated gasoline

At this point, the system will list all available files in the chosen category in reverse chronological order with brief descriptions. These files are compressed (i.e., ZIPed). Today's notice can be identified by the following title: JP4STAY.ZIP. To download this file, type the instructions below and transfer according to the appropriate software on your computer:

<D>ownload, <P>rotocol, <E>xamine, <N>ew, <L>ist, or <H>elp Selection or <CR> to exit: D filename.zip

You will be given a list of transfer protocols from which you must choose one that matches with the terminal software on your own computer. The software should then be opened and directed to receive the file using the same protocol. Programs and instructions for de-archiving compressed files can be found via <S>ystems Utilities from the top menu, under <A>rchivers/de-archivers. After getting the files you want onto your computer, you can quit the TTNBBS

with the <G>oodbye command. 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.

**II. Administrative Stay**

The administrative stay of the provisions concerning JP-4 and certain changes in sweet crude oil are being undertaken pursuant to section 307(d)(7)(B) of the Clean Air Act, 42 U.S.C. 7607(d)(7)(B). That provision authorizes the Administrator to stay the effectiveness of a rule for three months if the grounds for an objection arose after the period for public comment and if the objection is of central relevance to the outcome of the rule. In a separate Notice of Proposed Rulemaking, which is published elsewhere in this issue of the **Federal Register**, EPA is proposing to extend the stay for the duration of a rulemaking proposing these changes to the criteria for a baseline adjustment.

The grounds for an objection to the criteria for an individual baseline adjustment based on production of JP-4 jet fuel arose after the end of the public comment period for the Final Rule, "Regulation of Fuels and Fuel Additives; Standards for Reformulated and Conventional Gasoline," (59 FR 7716, February 16, 1994) and before the time allowed for seeking judicial review. New information has since been submitted to EPA concerning the number of parties potentially affected by the criteria adopted, and the ability of parties with more than one refinery to aggregate baselines and thereby avoid the adverse impacts of a failure to obtain an individual baseline adjustment. This information became available to EPA after the final criteria were adopted by EPA, and are directly relevant to the basic rationale for those criteria. Because this information concerns the impact of the final criteria adopted by EPA, it was not available at the proposal stage.

Similarly, the grounds for an objection to a lack of a baseline adjustment based on changes in the sulfur level of available crude oil arose after expiration of the period for public comment. It appears that the sulfur levels of crude have changed significantly since 1990 for certain areas of the country. Until EPA issued its final rules in December 1993, and more information was obtained on the sulfur levels of crude that would be available for use in 1995 and later, refiners that have historically relied on the availability of low sulfur crude could not identify for EPA the full impact of the final conventional gasoline

requirements on their ability to continue marketing conventional gasoline.

Based on the above, and the Agency's interest in reconsidering these provisions (discussed in the separate Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**), EPA hereby issues a three-month administrative stay of the effectiveness of the following rules, with certain conditions keyed to the requirements proposed elsewhere in this issue of the **Federal Register**. The stay is structured such that it will only affect those persons who meet the proposed requirements for a baseline adjustment.

First, 40 CFR 80.91(e)(7)(i)(A) through (C) is stayed for three months for all persons that meet the requirements of section 80.91(e)(7) as proposed in a separate Notice of Proposed Rulemaking. In effect, persons who meet the proposed requirements would be able to receive a baseline adjustment under 80.91(e)(7) if they also met the requirements of 80.91(e)(7) (ii) and (iii). If a person does meet these conditions, then the Agency may approve a baseline adjustment under the terms of this stay, or under the terms of any stay issued through rulemaking.

Second, 40 CFR 80.101(b)(1)(ii) is stayed for three months for all persons that meet the requirements proposed elsewhere in this issue of the **Federal Register** as of a new proposed section 80.91(e)(8), and that comply with an annual average sulfur level of 125% of the compliance baseline that would apply under the new proposed section 80.91(e)(8). In effect, the stay would only affect those persons who meet the proposed requirements for a baseline adjustment and who also meet the annual average sulfur level for conventional gasoline that would apply if they received a baseline adjustment under the related Notice of Proposed Rulemaking.

The terms of the three-month administrative stay apply to all gasoline produced from January 1, 1995 through to the end of any such stay.

### III. Environmental and Economic Impacts

The environmental impacts of today's action are minimal, as discussed above. Additionally, economic impacts are generally beneficial to affected refiners due to the additional flexibility afforded by the stay in combination with the baseline adjustments in a related Notice of Proposed Rulemaking published elsewhere in this issue of the **Federal Register**. Minimal anti-competitive effects are expected. The environmental and economic impacts of the

reformulated gasoline program are described in the Regulatory Impact Analysis supporting the December 1993 rule, which is available in Public Docket A-92-12 located at Room M-1500, Waterside Mall (ground floor), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

### IV. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 requires federal agencies to examine the effects of their regulations and to identify any significant adverse impacts of those regulations on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. In fact, today's action is designed to promote successful implementation of the anti-dumping requirements of the reformulated gasoline program for all affected parties.

### V. Administrative Designation

Pursuant to 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 entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rulemaking is not a "significant regulatory action".

### VI. 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.

### VII. Unfunded Mandates Act

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate; or by the private sector, of \$100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local or tribal governments in the aggregate, or to the private sector. This action has the net effect of reducing burden of the reformulated gasoline program on regulated entities. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

### XIII. Statutory Authority

The statutory authority for the administrative stay granted today is Section 307(d) and 301 of the Clean Air Act as amended; 42 U.S.C. 7414, 7545(c) and (k), and 7601.

### List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, Fuel additives, Gasoline, Motor vehicle pollution, Reporting and recordkeeping requirements.

Dated: July 21, 1995.

**Carol M. Browner,**  
Administrator.

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

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

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

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

2. Section 80.91 is amended by adding a new paragraph (e)(7)(iv) to read as follows:

**§ 80.91 Individual baseline determination.**

\* \* \* \* \*

(e) \* \* \*  
 (7) \* \* \*  
 (iv) The provisions of § 80.91(e)(7)(i)(A) through (C) are stayed until October 19, 1995, for all refiners which meet the following requirements:

(A) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery produced JP-4 jet fuel in 1990 and all of the following requirements are also met:

(I) The type of refinery must be described as one of the following:

(i) The refinery is the only refinery of a refiner such that it cannot form an aggregate baseline with another refinery (per paragraph (f) of this section); or

(ii) The refinery is one refinery of a multi-refinery refiner for which all of its refineries produced JP-4 in 1990 and each of the refineries also meets the requirements specified in paragraphs (e)(7)(iv)(A)(2) and (3); or

(iii) The refinery is one refinery of a multi-refinery refiner for which not all of the refiner's refineries produced JP-4 in 1990.

(2) No refinery of the refiner produces reformulated gasoline. If any refinery of the refiner produces reformulated gasoline at any time in a calendar year, the compliance baseline of all its refineries receiving a baseline adjustment per this paragraph (e)(7)(A) shall revert to each refinery's unadjusted baseline for that year and all subsequent years.

(3) 1990 JP-4 to gasoline ratio.

(i) For a refiner per paragraph (e)(7)(iv)(A)(1)(i) of this section, the ratio of its refinery's 1990 JP-4 production to its 1990 gasoline production must equal or exceed 0.15.

(ii) For a refiner per paragraph (e)(7)(iv)(A)(1)(ii) of this section, the ratio of each of its refinery's 1990 JP-4 production to its 1990 gasoline production must equal or exceed 0.15.

(iii) For a refiner per paragraph (e)(7)(iv)(A)(1)(iii) of this section, the ratio of the refiner's 1990 JP-4 production to its 1990 gasoline production must equal or exceed 0.15, when determined across all of its refineries.

(B) [Reserved]

\* \* \* \* \*

3. Section 80.101 is amended by adding a new paragraph (b)(1)(v) to read as follows:

**§ 80.101 Standards applicable to refiners and importers.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(v) The provisions of § 80.101 (b)(1)(ii) are stayed until October 19, 1995, for all refiners that meet the following requirements:

(A)(I) Baseline adjustments may be allowed, upon petition and approval (per § 80.93), if a refinery meets all of the following requirements:

(i) The refinery does not produce reformulated gasoline. If the refinery produces reformulated gasoline at any time in a calendar year, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years;

(ii) Has an unadjusted baseline sulfur value of not more than 50 ppm;

(iii) Is not aggregated with one or more other refineries per § 80.91(f). If a refinery which received an adjustment per this paragraph (b)(1)(v) subsequently is included in an aggregate baseline, its compliance baseline shall revert to its unadjusted baseline values for that year and all subsequent years;

(iv) Would require refinery improvements of at least \$10 million or 10 percent of the depreciated value of the refinery to comply with its unadjusted baseline;

(v) Can show that it could not reasonably or economically obtain crude oil from an alternative source that would permit it to produce conventional gasoline which would comply with its unadjusted baseline;

(vi) Has experienced at least a 25% increase in the average sulfur content of the crude oil used in the production of gasoline in the refinery since 1990, calculated as follows:

$$\frac{(CSHI - CS90)}{CS90} \times 100 = CS\%CHG$$

Where:

CSHI=highest annual average crude slate per paragraph (b)(1)(v)(A)(2)(ii) of this section

CS90=1990 annual average crude slate sulfur per paragraph

(b)(1)(v)(A)(2)(i) of this section

CS%CHG=percent change in average sulfur content of crude slate; and

(vii) Can show that gasoline sulfur changes are directly and solely attributable to the crude sulfur change, and not due to alterations in refinery operation nor choice of products.

(2) The adjusted baseline sulfur value shall be calculated as follows:

(i) Determine the average sulfur content (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1990;

(ii) Determine the highest crude sulfur level (ppm) of the crude slate utilized in the production of gasoline in the refinery in 1994; and

(iii) Determine the adjusted baseline sulfur value as follows:

$$ASULF = \frac{CSHI}{CS90} \times BSULF$$

Where:

ASULF=adjusted baseline sulfur value, ppm

BSULF=actual baseline sulfur value, ppm

CSHI=highest crude sulfur (ppm) per paragraph (b)(1)(v)(A)(2)(ii) of this section

CS90=1990 annual average crude slate sulfur per paragraph (b)(1)(v)(A)(2)(i) of this section

(3) In no case can the adjusted baseline sulfur value determined per paragraph (b)(1)(v)(A)(2) of this section exceed the sulfur value specified in § 80.91(c)(5)(iii).

(4) All adjustments made pursuant to this paragraph (b)(1)(v) must be accompanied by:

(i) Unadjusted and adjusted fuel parameters and emissions; and

(ii) A narrative describing the situation, the types of calculations, and the reasoning supporting the types of calculations done to determine the adjusted values.

(B) Annual average levels of sulfur shall not exceed 125% of the refiner's compliance baseline of sulfur, using the adjusted baseline determined under paragraph (b)(1)(v)(A) of this section.

\* \* \* \* \*

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