

The EPA Administrator signed the following Direct Final Rule on January 19, 2001. It is being submitted for publication in the Federal Register. While EPA has taken steps to ensure the accuracy of this internet version of the notice, it is not the official version for purposes of compliance. Please refer to the official version in a forthcoming Federal Register publication, as described in the notice.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85, and 86

[AMS-FRL-]

RIN ()

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

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

ACTION: **Direct Final Rule**

SUMMARY:

Today's action corrects, amends, and revises certain provisions of the Tier 2/Gasoline Sulfur regulations to assist regulated entities with program implementation and compliance. First, it makes minor corrections to clarify the regulations governing compliance with the gasoline sulfur standards. Second, with respect to the low sulfur gasoline program, it revises 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 amends 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 revises 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, today's action makes 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:

This direct final rule is effective [insert a date 60 days after publication in the Federal Register], without further notice, unless we receive adverse comments or a request for a public hearing by [insert a date 60 days after publication in the Federal Register]. Concurrently with this Direct Final Rule, we are publishing a Notice of Proposed Rulemaking. Should we receive any adverse comments on this Direct Final Rule, the section at which the comment was directed will be withdrawn and become a proposal,

allowing 60 days for public comment, after which time, we will publish a final rule on that section.

ADDRESSES:

Comments: All comments and materials relevant to today's action have been placed in 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, S.W., Washington, D.C. 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 publishing this rule without prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the "Proposed Rules" section of today's Federal Register publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final rule if adverse comments are filed. This rule will be effective on [Insert date 60 days from date of publication in the Federal Register] without further notice unless we receive adverse comment or a request for a public hearing by [Insert date 60 days from date of publication in the Federal Register]. 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 will become effective and which provisions are being withdrawn due to adverse comment. We will address all public comments in a subsequent final rule based on the 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 today's rule.

Regulated Entities:

This action will affect you if you manufacture new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It will also affect you if you produce, distribute, or sell gasoline.

The table below gives some examples of entities that may have to comply with the regulations. 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	3592 3714 5172 5984 7549 8742 8931	Alternative Fuel Vehicle Converters
Industry	811112 811198 541514	7533 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 484230	4212 4213	Gasoline Carriers

^a. North American Industry Classification System (NAICS).

^b. Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet:

Today's action 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 today's final rule 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.

Federal Register Web Site:

<http://www.epa.gov/docs/fedrgstr/epa-air/>
(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. Clarifications and Other Minor Corrections
- II. Geographic Phase-in Area
 - A. Application Deadline for GPA Standards
 - B. How Did EPA Establish the Geographic Phase-in Area?
 - C. How was the GPA Established 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
- G. Congressional Review Act

VIII. Statutory Provisions and Legal Authority

I. Clarifications and Other Minor Corrections

Section	Description of Clarification or Correction
§ 80.216(a)(1)(i) and (a)(2)	Revised 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)	Revised to change “of” to “with” for clarity.
§ 80.225(d)	Revised to clarify that the employee/crude oil criteria applies to parties seeking small refiner status under § 80.225(d).
§ 80.235(f)	Revised to clarify that to obtain approval as a small refiner, the information submitted under § 80.235 must show that the refiner employed an average of no more than 1500 people and had an average crude oil capacity less than or equal to 155,000 bpcd.
§ 80.235(g)(1)	Revised 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)	Revised 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)	Revised 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 revised to reference requirements under § 80.245(a)(3).
§ 80.285(a)(1)(i)	Revised to add the words “for a refinery” for clarity.
§ 80.285(a)(1)(ii)	Revised to add the words “for refineries” and “refineries” for clarity.
§ 80.285(a)(1)(iii)	Revised to add the words “for that refinery” for clarity.
§ 80.285(b)(1)(i)	Revised to add the words “for any refinery” for clarity.
§ 80.285(b)(1)(ii)	Revised 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)	Revised to add “under § 80.310” for clarity.

Section	Description of Clarification or Correction
§ 80.295(a)	Revised 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)	Revised to change an incorrect reference to § 80.65. The correct reference is § 80.69. Also revised to add the words “for a refinery” and “for that refinery” for clarity.
§ 80.305(a)	Revised 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)	Revised to add “for a refinery” and “at that refinery” and to change “refiner’s” to “refinery’s” for clarity.
§ 80.310(b)	Revised 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.
§ 80.410(d)(1)	Revised to change an incorrect reference to paragraph (c)(3)(i). The correct reference is paragraph (c)(3)(ii).
§ 80.410(s)	Revised to change an incorrect reference to paragraph (r). The correct reference is paragraph (p).
§ 86.1810-01(l)(1)	Corrected an inadvertent limitation of applicability by removing the model year designations in the referenced section numbers.
§ 86.1810-01(m)(1)	Corrected an inadvertent limitation of applicability by removing the model year designations in the referenced section numbers.
§ 86.1811-04(c)(3)(i) and (ii)	Revised 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)	Revised to delete an erroneous statement about the applicability of the spitback standard to newly assembled vehicles.

Section	Description of Clarification or Correction
§ 86.1811-04(f)(2)(i)	Revised to clarify an incorrect rounding procedure.
§ 86.1829-01(2)(i)	Revised to add a waiver provision for evaporative/refueling testing of CNG or LPG vehicles, inadvertently omitted.
§ 86.1835-01(d)	Corrected an incorrect reference to paragraph (b) to paragraph (a)
§ 86.1841-01(e)	Revised to clarify that RAFS may be applied only to NLEV vehicles.
§ 86.1845-04(f)(1)	Revised to change an incorrect reference to NMOG to NMHC.
§ 86.1846-01(a)(3)	Revised to add the word "passenger" to "medium-duty passenger vehicles" for clarity.
§ 86.1860-04(g)(2)(ii)	Revised to correct a rounding procedure.
§ 86.1860-04(h)	Revised 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)	Revised 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)	Revised formula to replace erroneous + symbol with X.

II. Geographic Phase-in Area

A. *Application Deadline for GPA Standards*

Due to the timing of today's action, we are extending the application deadline for GPA standards from December 31, 2000 to March 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 must 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 6755-56)

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, 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 was the GPA Established 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

¹primarily oxides of nitrogen (NOx) and volatile organic compounds (VOCs).

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 expanded 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 should be included in the GPA. These counties are shown in Figure 1 below and are listed in the regulatory text in a new §80.215.

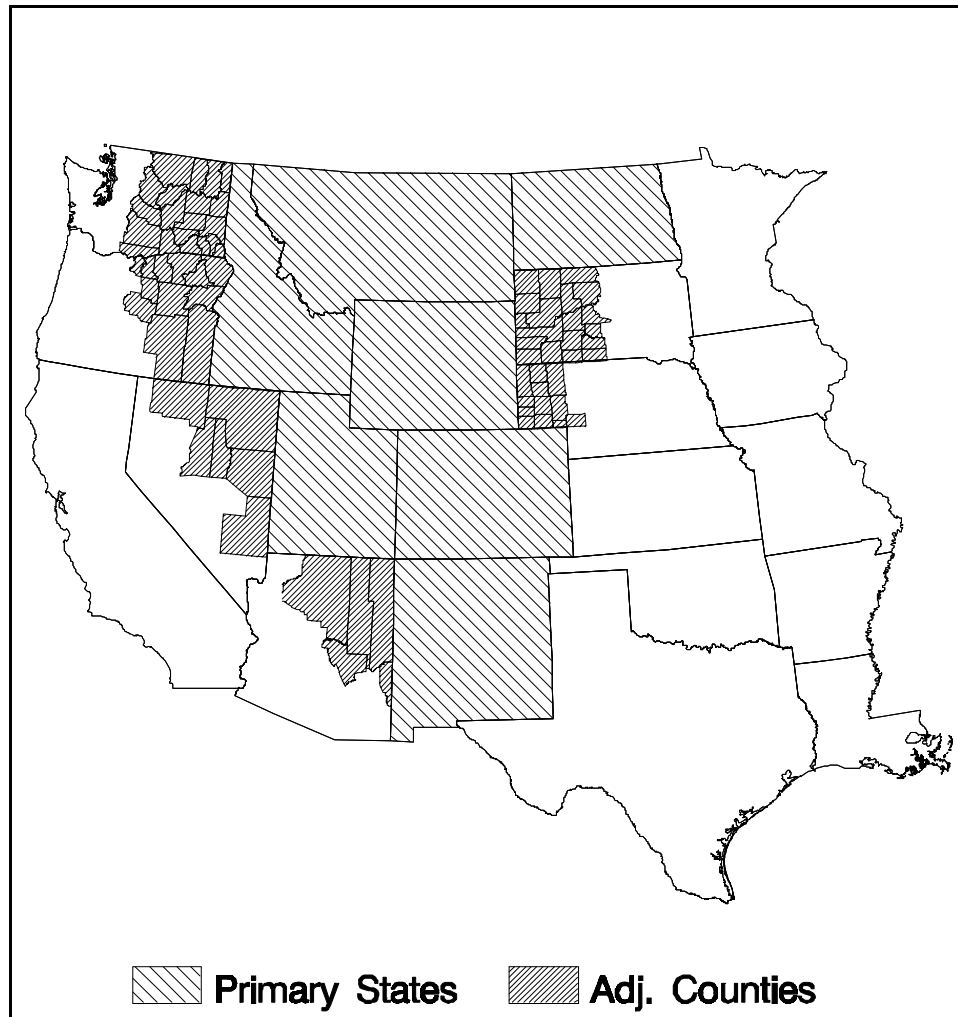


Figure 1. Geographic Phase-in Area

GPA gasoline sold in these counties is 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. These reservations are fully included 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 is 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, bringing the total gasoline consumption covered by the GPA program to 5.7 percent. Even though we have revised the GPA program to include these additional counties, 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. We believe that including the states, counties, and tribal lands described above will 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 rule modifies § 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 rule does 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 rule modifies § 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 rule modifies §§ 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 rule provides that, for such refineries, sulfur data for at least one annual averaging period is required to establish a sulfur baseline. The refiner's baseline application must 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 modifies §§ 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 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 will provide a reasonable a 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 rule requires 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 will 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 will 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, 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 rule modifies § 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 must 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 also modifies 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 must 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). It is not 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 rule revises § 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 rule removes 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 rule provides 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 rule also requires 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 who 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 will 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 includes 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 provides 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 the modification of the requirements for 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 low sulfur gasoline 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 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 rule modifies § 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 provides 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 can create an undue burden on parties. Under today's rule 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, will be able to discard samples in less than 90 days.

2. Composited 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 rule modifies § 80.335 to clarify that, prior to January 1, 2004, refiners who analyze composited samples are 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 blendstocks 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, are not 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 will allow us to combine samples of the actual RBOB and ethanol used in the handblend. This will enable us to determine whether the refiner blended the handblend with proper amounts of the components and properly conducted the testing. Today’s rule clarifies § 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 are making to Subpart S of 40 CFR Part 86 which contains the certification compliance regulations for new motor vehicles. The changes correct some errors and inconsistencies and add some clarification. We believe these changes are minor and technical in nature, and can 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 final rule is not a "significant regulatory action."

B. Regulatory Flexibility

We have determined that this rule will 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 corrects, amends, and revises certain provisions of the December 1999 regulations for the control of air pollution from new motor vehicles and for low sulfur gasoline, regulated entities will 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, resulting in additional flexibility for refiners providing gasoline to those areas.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 USC 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), P.L. 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 rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will 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 has 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 rule was developed during the period when Executive Order 13084 was still in force, and so tribal considerations were addressed under Executive Order 13084.

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 does 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 does 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. 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 notice, 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 consults 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 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). 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 final 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. This rule clarifies and corrects 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 identifies additional areas to be subject to the GPA program for low sulfur gasoline. The requirements of the rule will 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 rule.

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 P.L. 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 we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule 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 rule 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 (E.O.) 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 E.O. 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, 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 rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by E.O. 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

G. Congressional Review Act

The congressional review Act, 5 U.S.C. §801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A Major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. §804(2). This rule will be effective [insert date 45 days after publication] .

VIII. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls set in today's final rule 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 final rule 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 final rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

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.

40 CFR Part 85

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

40 CFR Part 86

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

Dated: _____

Carol M. Browner, Administrator

For the reasons set forth in the preamble, part 80 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: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.215(a) is amended by revising paragraph (a)(2) to read as follows:

§ 80.215 What is the scope of the geographic phase-in program?

(a) * * *

(2) In addition, the following counties within the states identified below and the following Federal Indian reservations are included in the GPA:

<u>Arizona</u>	<u>Nebraska</u>	<u>Nevada</u>	<u>Oregon</u>	<u>South Dakota</u>	<u>Washington</u>
Apache	Deuel	Elko	Baker	Bennett	Adams
Coconino	Banner	Eureka	Crook	Butte	Asotin
Gila	Box Butte	Humboldt	Gilliam	Corson	Benton
Greenlee	Cheyenne	Lander	Grant	Custer	Chelan
Navajo	Dawes	Lincoln	Harney	Dewey	Columbia
	Garden	White Pine	Malheur	Fall River	Douglas
	Keith		Morrow	Haakon	Ferry
	Kimball		Sherman	Harding	Franklin
	Morrill		Umatilla	Jackson	Garfield
	Scotts Bluff		Union	Jones	Grant
	Sheridan		Wallowa	Lawrence	Kittitas
	Sioux		Wheeler	Meade	Klickitat
				Mellette	Lincoln
				Pennington	Okanogan
				Perkins	Pendoreille
				Shannon	Spokane
				Stanley	Stevens
				Todd	Walla Walla
				Ziebach	Whitman
					Yakima

Federal Indian reservations: Burns Paiute, Cheyenne River, Colville, Duck Valley, Ely Colony, Fort Apache, Fort McDermitt, Goshute, Haulapai, Havasupai, Hopi, Kalispel,

Navajo, Pine Ridge, Rosebud, Yakama, San Carlos, Spokane, Standing Rock, Summit Lake, Te-Moak, Umatilla, Winnemucca.

(3) Contiguous tribal reservations of a particular tribe are included in the GPA if a portion of the tribal reservation is within the GPA state or county.

(4) Any dispensing facility located partially within a GPA county or tribal reservation land shall be considered fully within the GPA for purposes of this program.

* * * * *

3. Section 80.216 is amended by revising paragraphs (a)(1)(i) and (a)(2) to read as follows:

§ 80.216 What standards apply to gasoline produced or imported for use in the GPA?

(a) * * *

(1) * * *

(i) 150.00 ppm; or

* * * * *

(2) In the case of any refinery whose actual annual sulfur average decreases to a level lower than the refinery's annual average sulfur standard established under paragraph (a)(1) of this section during the period 2000 through 2003, the standard applicable to that refinery from 2004 through 2006 shall be the lowest average sulfur content for any year in which the refinery generated allotments or credits under § 80.275(a) or § 80.305 plus 30 ppm, not to exceed 150.00 ppm.

* * * * *

4. Section 80.217 is amended by revising paragraph (b) to read as follows:

§ 80.217 How does a refiner or importer apply for the GPA standards?

* * * * *

(b) Applications under paragraph (a) of this section must be submitted by March 1, 2001.

* * * * *

5. Section 80.225 is amended by revising paragraph (d) to read as follows:

§ 80.225 What is the definition of a small refiner?

* * * * *

(d) Notwithstanding the definition in paragraph (a) of this section, refiners who acquire and/or reactivate a refinery that was shutdown or was non-operational between January 1, 1998, and January 1, 1999, may apply for small refiner status in accordance with the provisions of § 80.235. The employee (1500 annual average) and crude oil capacity criteria (155,000 bpcd) for small refiner status for such refineries will be determined in accordance with the provisions of § 80.235(f).

6. Section 80.230 is amended by revising paragraph (a)(1) to read as follows:

§ 80.230 Who is not eligible for the hardship provisions for small refiners?

(a) * * *

(1) Refiners with refineries built after January 1, 1999;

* * * * *

7. Section 80.235 is amended by revising paragraphs (a), (c)(2), (f) and (g)(1) to read as follows:

§ 80.235 How does a refiner obtain approval as a small refiner?

* * * * *

(c) * * *

(2) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE), or, in the case of a foreign refiner, a comparable reputable source, such as a professional publication or trade journal. The information submitted to EIA or the comparable reputable source is presumed to be correct. In cases where a company, domestic or foreign, disagrees with this information, the company may petition EPA with appropriate data to correct the record within 60 days after the company submits its application for small refiner status.

* * * * *

(f) Approval of small refiner status for refiners who apply under § 80.225(d) will be based on all information submitted under paragraph (c) of this section. The information submitted must show that the refiner employed an average of no more than 1500 people and had an average crude oil capacity less than or equal to 155,000 bpcd. Where appropriate, the employee and crude oil capacity criteria for such refiners will be

based on the most recent 12 months of operation.

(g) * * *

(1) If approved, EPA will notify the refiner of each refinery's applicable annual average sulfur standard, baseline volume, and per-gallon cap standard under § 80.240 for the 2004-2007 averaging periods.

* * * * *

8. Section 80.245 is amended by revising paragraph (a)(3) and adding paragraph (c) to read as follows:

§ 80.245 How does a small refiner apply for a sulfur baseline?

(a)* * *

(3) For any refiner that acquires and/or reactivates a refinery that was shut down or non-operational between January 1, 1997, and December 31, 1998, the average sulfur level and average volume of gasoline produced during each annual averaging period that the refinery was in operation after the refinery was acquired and/or reactivated. EPA will evaluate all of the information and data submitted by the refiner in determining the appropriate sulfur baseline for the refinery. Where EPA concludes that the data submitted reasonably reflects current sulfur levels, the refinery's baseline will be determined based on the average sulfur content of gasoline produced by the refinery during the most recent annual averaging period in which the refinery was in operation.

* * * * *

(c)(1) Foreign refiners who do not have an approved individual refinery baseline under § 80.94 must follow the procedures specified in § 80.410(b).

(2) Foreign refiners who have an approved individual refinery baseline under § 80.94, but one that was not in effect for purposes of anti-dumping compliance during the 1997-1998 annual averaging periods, must comply with the requirements of this section for the gasoline produced at the refinery and imported into the United States during each of the annual averaging periods in which the refinery was subject to its individual anti-dumping baseline. EPA will evaluate all of the information and data submitted under this section in determining the foreign refinery's sulfur baseline pursuant to this paragraph. Where EPA concludes that the data submitted reasonably reflects current sulfur levels, the refinery's baseline will be determined based on the annual average sulfur level and volume of gasoline produced by the foreign refinery and imported into the U.S. during the most recent annual averaging period in which the refinery was subject to its individual anti-dumping baseline.

9. Section 80.250 is amended by revising the definitions of "n" and "i" in the equations in paragraphs (a)(1) and (a)(2), adding paragraphs (a)(3) and (a)(4), and

reserving paragraph (b) to read as follows:

§ 80.250 How is the small refiner sulfur baseline and volume determined?

(a)* * *

(1)* * *

n = Total number of batches of gasoline produced from January 1, 1997, through December 31, 1998 (or the total number of batches of gasoline pursuant to § 80.245(a)(3); or, for a foreign refinery, the total number of batches of gasoline produced and imported into the U.S. from January 1, 1997, through December 31, 1998, or the total number of batches of gasoline produced and imported into the U.S. pursuant to § 80.245(c)(2)).

i = Individual batch of gasoline produced from January 1, 1997, through December 31, 1998 (or individual batch of gasoline pursuant to § 80.245(a)(3); or, for a foreign refinery, individual batch of gasoline produced and imported into the U.S. from January 1, 1997, through December 31, 1998, or individual batch of gasoline produced and imported into the U.S. pursuant to § 80.245(c)(2)).

(2)* * *

n = Total number of batches of gasoline produced from January 1, 1997, through December 31, 1998 (or the total number of batches of gasoline pursuant to § 80.245(a)(3); or, for a foreign refinery, the total number of batches of gasoline produced and imported into the U.S. from January 1, 1997, through December 31, 1998, or the total number of batches of gasoline produced and imported into the U.S. pursuant to § 80.245(c)(2)).

i = Individual batch of gasoline produced from January 1, 1997, through December 31, 1998 (or individual batch of gasoline produced pursuant to § 80.245(a)(3); or, for a foreign refinery, individual batch of gasoline produced and imported into the U.S. from January 1, 1997, through December 31, 1998, or individual batch of gasoline produced and imported into the U.S. pursuant to § 80.245(c)(2)).

(3) Any refiner who, under § 80.69 or § 80.101(d)(4), included oxygenate blended downstream in compliance calculations for 1997-1998 must include this oxygenate in the baseline calculations for sulfur content under this section.

(4) Sulfur baseline calculations under this section shall be conducted to two decimal places.

(b) Reserved.

* * * * *

10. Section 80.285 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), (b)(1)(i), (b)(1)(ii) and (b)(2) to read as follows:

§ 80.285 Who may generate credits under the ABT program?

(a)* * *

(1)* * *

(i) Refiners who establish a sulfur baseline under § 80.295 for a refinery;

(ii) Foreign refiners for refineries with an approved baseline under § 80.94, or refineries with baselines established in accordance with § 80.290(d); or

(iii) Small refiners for any refinery subject to the standards under § 80.240, using their small refiner baseline established under § 80.250 for that refinery.

* * * * *

(b)* * *

(1)* * *

(i) Refiners for any refinery, and importers subject to the standards under § 80.195;

(ii) Refiners and importers of gasoline designated as GPA gasoline under § 80.219, using the refinery's annual average sulfur standard for GPA gasoline established under § 80.216(a)(for any party generating credits under both paragraph (b)(1)(i) of this section and this paragraph (b)(1)(ii), such credits must be calculated separately); or

* * * * *

(2) Generation of credits under § 80.310 for all imported gasoline shall be through the importer.

* * * * *

11. Section 80.290 is amended by adding paragraph (c)(6) and revising paragraph (d) to read as follows:

§ 80.290 How does a refiner apply for a sulfur baseline?

* * * * *

(c)* * *

(6) For any refiner that acquires and/or reactivates a refinery that was shut down or non-operational between January 1, 1997, and December 31, 1998, the average sulfur level of gasoline produced during each annual averaging period that the refinery was in operation after the refinery was acquired and/or reactivated. EPA will evaluate all of the data submitted by the refiner in determining the appropriate sulfur baseline for the refinery. Where EPA concludes that the data submitted reasonably reflects current sulfur levels, the refinery's baseline will be determined based on the average sulfur content of the refinery's gasoline production during the most recent annual averaging period the refinery was in operation.

(d)(1) Foreign refiners who do not have an approved refinery baseline under § 80.94 must follow the procedures specified in § 80.410(b).

(2) Foreign refiners who have an approved individual refinery baseline under § 80.94, but one that was not in effect for purposes of anti-dumping compliance during the 1997-1998 annual averaging periods, must comply with the requirements of this section for the gasoline produced at the refinery and imported to the U.S. during each annual averaging period in which the refinery was subject to its individual anti-dumping baseline. EPA will evaluate all of the information and data submitted under this section in determining a foreign refinery's sulfur baseline pursuant to this paragraph. Where EPA concludes that the data submitted reasonably reflects current sulfur levels, a foreign refinery's baseline sulfur level under this paragraph will be determined based on the average sulfur level of gasoline produced by the foreign refinery and imported to the U.S. during the most recent annual averaging period in which the refinery was subject to its individual anti-dumping baseline.

* * * * *

12. Section 80.295 is amended by revising the definitions of “n” and “i” in the equation in paragraph (a), revising paragraph (b) and adding paragraph (c) to read as follows:

§ 80.295 How is a refinery sulfur baseline determined?

(a)* * *

n = Total number of batches of gasoline produced during January 1, 1997 through December 31, 1998 (or the total number of batches of gasoline pursuant to § 80.290(c)(6); or, for a foreign refinery, the total number of batches of gasoline produced and imported into the U.S. during January 1, 1997 through December 31, 1998, or, the total number of batches of gasoline produced and imported into the U.S. pursuant to § 80.290(d)(2)).

i = Individual batch of gasoline produced during January 1, 1997 through December 31, 1998 (or individual batch of gasoline produced pursuant to § 80.290(c)(6); or, for a foreign refinery, individual batch of gasoline produced and imported into the U.S. during January 1, 1997 through December 31, 1998, or, individual batch of gasoline produced and imported into the U.S. pursuant to § 80.290(d)(2)).

(b) Any refiner who, under § 80.69 or § 80.101(d)(4), included oxygenate blended downstream in compliance calculations for 1997-1998 for a refinery must include this oxygenate in the baseline calculations for sulfur content for that refinery under paragraph (a) of this section.

(c) Sulfur baseline calculations under this section shall be conducted to two decimal places.

13. Section 80.305 is amended by revising the definitions of “V_a” and “S_a” in the equation in paragraph (a), and revising paragraph (d) to read as follows:

§ 80.305 How are credits generated during the time period 2000 through 2003?

(a)* * *

V_a = Total volume of gasoline produced during the averaging period at the refinery (or for a foreign refinery, the total volume of gasoline produced during the averaging period at the refinery that was imported into the U.S. in accordance with the requirements of § 80.410)

* * * * *

S_a = Actual annual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced during the averaging period by the refinery, exclusive of any credits, (or for a foreign refinery, the actual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced during the averaging period at the refinery that was imported into the U.S., in accordance with the requirements of § 80.410, exclusive of any credits.)

* * * * *

(d) Refiners may generate credits for gasoline produced during an averaging period for a refinery only if the annual average sulfur level for the gasoline produced at that refinery during the averaging period is less than 0.90 of the refinery's baseline under § 80.250 or § 80.295.

* * * * *

14. Section 80.310 is amended by revising the definitions of S_{std} and S_a in paragraph (b) to read as follows:

§ 80.310 How are credits generated beginning in 2004?

* * * * *

(b)* * *

S_{std} = 30 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the standard for GPA gasoline established for a refinery under § 80.216(a).

S_a = Actual annual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

* * * * *

15. Section 80.330 is amended by revising paragraphs (a)(3) and (a)(4) to read as follows:

§ 80.330 What are the sampling and testing requirements for refiners and importers?

(a)* * *

(3) Prior to January 1, 2004:

(i) Any refiner may release gasoline from the refinery prior to obtaining the test results required under paragraph (a)(1) of this section.

(ii) Any refiner of conventional gasoline may combine samples of gasoline from more than one batch of gasoline or blendstock prior to analysis and treat such composite sample as one batch of gasoline or blendstock pursuant to the requirements of § 80.101(i)(2).

(4)(i) Beginning January 1, 2004, any refiner who produces gasoline using computer-controlled in-line blending equipment is exempt from the requirement of paragraph (a)(1) of this section to obtain the test results required under paragraph (a)(1) of this section prior to the gasoline leaving the refinery, provided that the refiner obtains an exemption from this requirement from EPA. To obtain such exemption, the refiner must:

(A) Have been granted an in-line blending exemption under § 80.65(f)(4); or

(B) If the refiner has not been granted an exemption under § 80.65(f)(4), submit to EPA all of the information required under § 80.65(f)(4)(i)(A). A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the submission is true to the best of his/her belief must accompany any submission under this paragraph (a)(4)(i)(B).

(ii) Refiners who seek an exemption under paragraph (a)(4)(i) of this section must comply with any request by EPA for additional information or any other requirements that EPA includes as part of the exemption.

(iii) Within 60 days of EPA's receipt of a submission under paragraph (a)(4)(i)(B) of this section, EPA will notify the refiner if the exemption is not approved or of any deficiencies in the refiner's submission, or if any additional information is required or other requirements are included in the exemption pursuant to (a)(4)(ii) of this section. In the absence of such notification from EPA, the effective date of an exemption under paragraph (a)(4)(i) of this section for refiners who do not hold an exemption under § 80.65(f)(4) is 60 days from EPA's receipt of the refiner's submission under paragraph (a)(4)(i)(B) of this section.

(iv) EPA reserves the right to modify the requirements of an exemption under paragraph (a)(4)(i) of this section, in whole or in part, at any time, if EPA determines that the refiner's operation does not effectively or adequately control, monitor or document the sulfur content of the refinery's gasoline production, or if EPA determines that any 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. If EPA finds that a refiner provided false or inaccurate information in any submission required for an exemption under this section, upon notification from EPA, the refiner's exemption will be void ab initio.

* * * * *

16. Section 80.335 is amended by revising paragraph (a)(2) and adding paragraphs (a)(5) and (a)(6) to read as follows:

§ 80.335 What gasoline sample retention requirements apply to refiners and importers?

(a)* * *

(2) 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, not to exceed 90 days for any given sample.

* * * * *

(5) Prior to January 1, 2004, for purposes of complying with the requirements of this section, refiners who analyze composited samples under § 80.330(a)(3) must retain portions of the composited samples. Portions of samples of each batch comprising the composited samples are not required to be retained.

(6) For purposes of complying with the requirements of this section for RBOB, a sample of each RBOB batch produced plus a sample of the ethanol used to conduct the handblend testing pursuant to § 80.69 must be retained.

* * * * *

17. Section 80.410 is amended by revising paragraphs (d)(1), (d)(3)(ii), the introductory text of (f)(2)(ii), and (s) to read as follows:

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

* * * * *

(d)* * *

(1) Any foreign refiner of a foreign refinery that has been assigned an individual sulfur baseline must designate each batch of Sulfur-FRGAS as such at the time the gasoline is produced, unless the refinery has elected to classify no gasoline exported to the United States as Sulfur-FRGAS under paragraph (c)(3)(ii) of this section.

* * * * *

(3)* * *

(ii) The certification shall be made part of the product transfer documents for the Sulfur-FRGAS. Prior to 2004, the information required under paragraph (d)(3)(i)(D)(1) of this section may be omitted from the product transfer documents that accompany the gasoline, provided that such information is provided to the United States importer prior to collection of the representative sample required under § 80.410(o)(3)(ii)(A).

* * * * *

(f) * * *

(2) * * *

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for sulfur in accordance with the methodology and requirements specified in § 80.330, by:

* * * * *

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under § 80.250 or § 80.295, any alternative procedures under paragraph (p) of this section, and any certification under paragraph (d)(3) of this section shall be:

* * * * *

Part 86 - - [Amended]

18. The authority citation for part 86 continues to read as follows:
Authority: 42 U.S.C. 7401-7671q.

19. Section 86.1810-01 is amended by revising paragraph (l)(1) to read as follows:

* * * * *

(l) Fuel dispensing spitback testing waiver. (1) Vehicles certified to the refueling emission standards set forth in Secs. 86.1811(e), 86.1812(e) and 86.1813(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

* * * * *

20. Section 86.1810-01 is amended by revising paragraph (m)(1) to read as follows:

* * * * *

(m) Inherently low refueling emission testing waiver. (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in Secs. 86.1811(e), 86.1812(e) and 86.1813(e) provided that:

* * * * *

21. Section 86.1811-04 is amended by revising paragraphs (c)(3)(i) and (ii) to read as follows:

* * * * *

(3) (i) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles certified to bin 10 in Table S04-1, when operated on the alcohol or gaseous fuel they are designed to use, manufacturers may choose to comply with an NMOG standard of 0.230 for LDV/LLDTs or 0.280 g/mi for HLDT/MDPVs at full useful life and corresponding intermediate life standards of 0.160 g/mi and 0.195 g/mi, respectively, when these flexible-fueled, bi-fuel or dual fuel vehicles are certified to operate on gasoline or diesel fuel.

(ii) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles certified to bin 8 in Table S04-1, when operated on the alcohol or gaseous fuel they are designed to use, manufacturers may choose to comply with a NMOG standard of 0.156 g/mi for LDV/LLDTs and 0.180 for HLDT/MDPVs at full useful life and corresponding intermediate life standards of 0.125 g/mi and 0.140 g/mi, respectively, when these flexible-fueled, bi-fuel or dual fuel vehicles are certified to operate on gasoline or diesel fuel.

* * * * *

22. Section 86.1811-04 is amended by revising paragraph (e) to read as follows:

* * * * *

(e) Evaporative emission standards. Consistent with the phase-in requirements in paragraph (k) of this section, evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled vehicles must not exceed the standards in this paragraph. The standards apply equally to certification and in-use vehicles.

* * * * *

23. Section 86.1811-04 is amended by revising paragraph (f)(2)(i) to read as follows:

* * * * *

(f)(2)(i) Manufacturers must calculate their applicable full useful life SFTP standards for NMHC+NO_x, PM and for CO, if using the weighted CO standard. If not using the weighted CO standard, manufacturers may use the full useful life standalone Tier 1 standards for US06 and SC03. To calculate the applicable full useful life weighted NMHC+NO_x, PM and CO standards, manufacturers must use the following formula:

SFTP Standard = SFTP Standard₁ – [0.35 x (FTP Standard₁ -- Current FTP Standard)]

where:

SFTP Standard = Applicable full life weighted SFTP standard for NMHC+NO_x, PM or CO. The NMHC+NO_x and PM standards must be rounded to two decimal places and the CO standard must be rounded to one decimal place.

* * * * *

24. Section 86.1829-01 is amended by revising paragraph (b)(2)(i) to read as follows:

* * * * *

(b)(2)(i) Testing at low altitude. One EDV in each evaporative/refueling family and evaporative/refueling emission control system combination must be tested in accordance with the evaporative/refueling test procedure requirement of subpart B of this part. The configuration of the EDV will be determined under the provisions of Sec. 86.1828-01. The EDV must also be tested for exhaust emission compliance using the FTP and SFTP procedures of subpart B of this part. In lieu of testing natural gas-fueled or liquefied petroleum gas-fueled vehicles, the manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such emission testing as the manufacturer deems appropriate, these vehicles will comply with the emission standards.

* * * * *

25. Section 86.1835-01(d) is amended by revising paragraph (d) to read as follows:

* * * * *

(d) Upon request of the manufacturer, the Administrator may issue a conditional certificate of conformity for a test group which has not completed the Administrator testing required under paragraph (a) of this section. Such a certificate will be issued based upon the condition that the confirmatory testing be completed in an expedited manner and that the results of the testing be in compliance with all standards and procedures.

* * * * *

26. Section 86.1841-01 is amended by revising paragraph (e) to read as follows:

* * * * *

(e) Unless otherwise approved by the Administrator, manufacturers must not use Reactivity Adjustment Factors (RAFs) in their calculation of the certification level of any pollutant for any vehicle except for LDVs and LLDTs participating in the National Low Emission Vehicle (NLEV) program described in Subpart R of this Part, regardless of the fuel used in the test vehicle.

27. Section 86.1845-04 is amended by revising paragraph (f)(1) to read as follows:

* * * * *

(f)(1) A manufacturer may conduct in-use testing on a test group by measuring NMHC exhaust emissions rather than NMOG exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the adjustment factor used for certification of the test group, or another adjustment factor acceptable to the Administrator, to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMHC exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the emission bin to which the test group was certified.

* * * * *

28. Section 86.1846-01 is amended by revising paragraph (a)(3) to read as follows:

(a) * * *

(3) For purposes of this section, the term vehicle includes light-duty vehicles, light-duty trucks and medium-duty passenger vehicles.

* * * * *

29. Section 86.1860-04 is amended by revising paragraphs (g)(2)(ii) and (h) to read as follows:

* * * * *

(g) * * *

(2) * * *

(ii) The manufacturer must calculate these extra NOx credits, where permitted, by substituting an adjusted NOx standard for the applicable NOx standard from the full useful life certification bin when it calculates the applicable fleet average NOx emissions by the procedure in paragraph (f) of this section. The adjusted standard must be equal to the applicable full useful life NOx standard multiplied by 0.85 and rounded to one more decimal place than the number of decimal places as the applicable full useful life NOx standard.

* * * * *

(h) Additional credits for vehicles certified to low bins. A manufacturer may obtain additional NOx credits by certifying vehicles to bins 1 and/or 2 in model years from 2001 through 2005 subject to the following requirements:

(1) When computing the fleet average Tier 2 NOx emissions using the formula in paragraph (f)(2) of this section, the manufacturer may multiply the number of vehicles certified to bins 1 and 2 by the applicable multiplier shown in Table S04-11 when computing the denominator in the formula. These multipliers may not be used after model

year 2005. The table follows:

Table S04-11--Multipliers for Additional Tier 2 NOx Credits for Bin 1 and 2 LDV/Ts.

Bin	Model year	Multiplier
2.....	2001, 2002, 2003, 2004, 2005.	1.5
1.....	2001, 2002, 2003, 2004, 2005.	2.0

(2) Optionally, instead of the process described in paragraph (h)(1) of this section, when computing Tier 2 NOx credits using the formula in (b)(1) of section 86.1861-04, the manufacturer may multiply the number of vehicles certified to bin 1 and bin 2 by the applicable multiplier shown in Table S04-11 in paragraph (h)(1) of this section when computing the “Total number of Tier 2 Vehicles Sold, Including ZEVs and HEVs”. These multipliers may not be used after model year 2005.

30. Section 86.1861-04 is amended by revising paragraph (a)(5) and the equation in paragraph (b)(1) to read as follows:

(a) * * *

(5) A small volume manufacturer that has opted not to meet all phase-in requirements as permitted under §86.1811-04(k)(5), must:

(i) demonstrate compliance or obtain appropriate credits to comply with the 0.30 g/mi. fleet average NOx standard for interim LDV/LLDTs for 100% of its LDV/LLDTs for one model year , in order to carry forward a credit deficit for later model year interim LDV/LLDTs; and

(ii) demonstrate compliance or obtain appropriate credits to comply with the 0.07 g/mi. fleet average NOx standard for 100% of its LDV/LLDTs for one model year , in order to carry forward a credit deficit for later model year Tier 2 LDV/LLDTs; and

(iii) demonstrate compliance or obtain appropriate credits to comply with the 0.20 g/mi. fleet average interim NOx standard for 100% of its HLDT/MDPVs for one model year, in order to carry forward a credit deficit for later model year interim HLDT/MDPVs.

* * *

(b)(1) * * * [(Fleet Average NOx Standard) – (Manufacturer’s Fleet Average NOx Value)] X (Total Number of Tier 2 Vehicles Sold, Including ZEVs and HEVs) * * *

* * * * *