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production of JP–4 jet fuel. In such cases, EPA has "case-by-case discretion" to grant variances or even dispensation from a rule where imposition of the requirement would result in minimal environmental benefit but would extremely burden a regulated party.²

This notice of proposed rulemaking (NPRM) proposes to allow baseline adjustments for three situations where parties would be extremely burdened by the current regulations were relief not granted. Specifically, today's notice proposes to revise the requirements for a baseline adjustment due to JP-4 jet fuel production in 1990, to add a provision addressing the use of extremely sweet crude in 1990 which is no longer available, and to add a provision addressing compliance difficulties arising from a baseline which is very low in both sulfur and olefins. EPA is also issuing a threemonth administrative stay, which is published elsewhere in this issue of the Federal Register, with regard to the first two baseline adjustment issues above pending reconsideration of the applicable provisions by the Agency. In addition, EPA proposes to extend the stay until final action is taken on the regulatory changes proposed herein. For refiners which qualify for one or more of the baseline adjustments proposed today, EPA proposes to apply the adjustments to gasoline produced in 1995. This notice also proposes to revise the regulations concerning the publication and confidentiality of individual baselines and the information submitted to receive such a baseline. Comments and supporting data are requested on any aspect of today's document.

II. JP-4 Baseline Adjustment

A. Introduction

JP-4 jet fuel, the use of which is being phased out by the Defense Department, was produced by many refiners under contract with the Defense Department in 1990. Because the JP-4 blendstock is now likely to be used in gasoline, most of that blendstock cannot be used in gasoline without first going through a reformer to increase its octane to suitable gasoline levels. Due to the high aromatic content of streams after reforming, the toxic emissions of the current gasoline of a refiner which produced JP-4 in 1990 will likely increase relative to its 1990 values. In addition, it is possible that gasoline production would increase (relative to

1990 production) due to movement of blendstocks directly and indirectly from JP–4 to gasoline. The impact of the increase in aromatic content and/or additional volume due to JP–4 phaseout will, of course, affect certain refiners more extremely than others.

The current regulations provide for an adjustment to a refiner's individual baseline due to production of JP-4 in 1990 if three criteria are met. The criteria were fashioned to ensure that the requirements of Alabama Power were met. First, JP–4 baseline adjustments will be allowed only for a refiner which will not produce reformulated gasoline. If a refiner granted such an adjustment subsequently produces reformulated gasoline, its conventional gasoline compliance would be subject to its original unadjusted baseline during the current averaging period and all subsequent years. For multi-refinery refiners, this provision applies on a refiner-wide basis. Second, a JP-4 baseline adjustment is available primarily to qualifying single-refinery refiners. A multi-refinery refiner could also receive an adjustment if each of its refineries produced JP-4 in 1990 and each refinery also met the other requirements for obtaining the adjustment. Third, the refiner is required to show that a significant burden would exist if no baseline adjustment was allowed. The current regulations require that the ratio of a refinery's 1990 JP-4 production to its 1990 gasoline production equal or exceed 0.5 in order to qualify as a significant burden.

EPA expected minimal negative environmental affects from allowing baseline adjustments under the criteria specified in the current regulations because (1) the number of refineries meeting the criteria for a baseline adjustment is expected to be quite small, and (2) the total production of all such refineries is also small.

B. Proposal

In today's notice, EPA proposes provisions related to JP–4 baseline adjustments which are essentially as contained in the direct final rule (DFRM), published July 20, 1994 (59 FR 36944).³ The provisions are discussed below. For detailed discussion of the provisions proposed today, refer to the support document for this rule, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.

1. Multiple-Refinery Requirement

EPA proposes that the following conditions would have to be met by a multi-refinery refiner in order for that refiner to qualify for a baseline adjustment for 1990 JP–4 production at one or more of its refineries:

(1) Produced JP–4 at one or more of its refineries in 1990.

The current JP–4 baseline adjustment provisions for multi-refinery refiners require each refinery to have produced JP–4 in 1990. EPA believes it may use its discretion to provide relief because the requirements of *Alabama Power* are satisfied. If a multi-refinery refiner qualifies for a baseline adjustment under this criterion, it would (1) determine the adjusted baseline of the refinery(ies) which actually produced JP–4 in 1990 and (2) determine its antidumping compliance on an aggregate basis.

(2) Has a 1990 JP-4 to gasoline ratio of at least 0.15 (see discussion below regarding JP-4 baseline adjustment ratio).

(a) For each individual refinery, if all of its refineries produced JP–4 in 1990, in which case the refiner may comply with the anti-dumping requirements on an individual or aggregate basis; or

(b) On a refiner-wide basis, in which case the refiner must determine an individual baseline for each of its refineries but must comply with the anti-dumping requirements on an aggregate basis; and

(3) Will not produce RFG at any of its refineries.

EPA requests comments on this change to the current JP–4 baseline adjustment provisions concerning multi-refinery refiners.

2. JP-4 Baseline Adjustment Ratio

The current regulations for a baseline adjustment require that the ratio of the refinery's 1990 JP–4 production to its 1990 gasoline production must equal or exceed 0.5. Based on responses from affected refiners, very few refiners under contract to produce JP–4 would have the relief intended by the provision. Further, EPA has evaluated data it received subsequent to December 1993 concerning 1990 JP–4 and gasoline production for refiners (both multi- and

² Alabama Power Company v. Costle, 636 F.2d 323.357 (D.C. Cir 1979).

³Since EPA received adverse comments on the changes specified in the DFRM with regard to JP– 4 baseline adjustments, EPA withdrew this DFRM based on EPA's determination, announced in the DFRM, that such provisions would take effect only if no persons submitted adverse comments or requested an opportunity to comment. For more discussion, see the support document, "Regulation of Fuels and Fuel Additives: Standards for Reformulated and Conventional Gasoline—Detailed Discussion and Analysis", Air Docket A–95–03.