

Reformulated Gasoline Foreign Refinery Rules

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Introduction

On August 27, 1997, the EPA promulgated revised the rules that allow foreign refiners to establish and use individual baselines, but it would not be mandatory (the optional use of an individual refinery baseline is not available to domestic refiners.) If a foreign refiner did not establish and use an individual baseline, the gasoline they export to the U.S. would be regulated through the importer, and subject to the importer's baseline (most likely the statutory baseline). Specific regulatory provisions are implemented to ensure that the option to use an individual baseline would not lead to adverse environmental impacts. This involves monitoring the average quality of imported gasoline, and if a specified benchmark is exceeded, remedial action would be taken by adjusting the requirements applicable to imported gasoline.

Table 1. History of Foreign Refiner Regulations

Action	Effective Date	Federal Register or Congressional Record Notice	
		Citation (1)	Date
Final Rule by EPA allows foreign refiners to establish individual refinery baselines	Aug. 27, 1997	62 FR 45533	Aug. 28, 1997
Notice of Proposed Rulemaking		62 FR 24775	May 6, 1997
EPA issues invitation for public comments		61 FR 33703	Jun. 28, 1996
U.S. agrees to meet obligations resulting from WTO dispute settlement proceedings	Jun. 19, 1996		
World Trade Organization finds the regulations discriminatory under the General Agreement on Tariffs and Trade 1994	Jan. 1996		
PL 103-327 signed by President, with amendment prohibiting EPA from using its funds to implement, or enforce a foreign refiner baseline.	Sep 28, 1994	103 CR D1169	Sep. 29, 1994
EPA proposes to amend regulations to allow foreign refiners to establish individual refinery gasoline baselines. No action taken.		59 FR 22900	May 3, 1994
EPA Final Rule for reformulated gasoline precludes foreign refiners from establishing individual refinery baselines.	Dec. 15, 1993	59 FR 7716	Feb. 16, 1994

Foreign Refinery Baseline

On August 27, 1997, the EPA promulgated revised the rules for imported conventional gasoline to allow a foreign refiner to petition EPA to establish an individual baseline reflecting the quality and quantity of gasoline produced at a foreign refinery in 1990 that was exported to the United States. The foreign refiner must meet the same requirements relating to the establishment and use of individual refinery baselines as are met by domestic refiners.

A foreign refiner who operates more than one refinery may choose to obtain an individual baseline for one, some, all or none of its refineries. Aggregate baselines may be composed of

some or all of a refiner's refineries with assigned individual baselines, and a refiner may have more than one aggregate baseline. Each refinery, though, can only be part of one aggregation. As with domestic refiners, the decision to form an aggregate baseline is a one-time decision.

The volume of gasoline that can be imported under the individual baseline for a foreign refinery is limited in the same manner as for domestic refiners, relative to a refinery's 1990 baseline volume. Shipments of conventional gasoline to the U.S. in excess of that refinery's individual baseline volume will be subject to the statutory baseline.

Foreign refiners may submit a baseline petition to EPA at any time before January 1, 2002. If gasoline is imported using an individual baseline while a petition for an individual baseline is pending, the foreign refiner will be subject to the ultimate approved baseline, which may change from the original submission due to errors or omissions uncovered during EPA review. While a foreign refiner would not have the right under the regulations to seek an individual baseline after January 1, 2002, after this date a foreign refiner could still petition EPA to revise this rule and establish an individual baseline.

The regulations also include additional requirements that address issues that are unique to foreign refiners, namely those related to tracking the movement of gasoline from the refinery to the United States border, monitoring compliance with the requirements applicable to foreign refiners, and imposition of appropriate sanctions for violations. Tracking, segregation and other compliance related provisions will only apply where a foreign refiner chooses to apply for an individual baseline. EPA will monitor the quality of imported conventional gasoline, and if it exceeds a specified benchmark, EPA will apply remedial action. The remedial action involves making the requirements for imported gasoline not subject to an individual baseline more stringent.

The gasoline produced at a foreign refinery with an individual refinery baseline that is imported into the United States is called "Foreign Refinery Gasoline," (FRGAS). Foreign refiners with individual baselines are required to designate all FRGAS into one of two categories:

1. **Certified FRGAS.** Conventional gasoline that is included in the foreign refiner's NO_x and exhaust toxics compliance calculations based on that refiner's individual baseline. The certified FRGAS will be subject to the same conventional gasoline requirements as the conventional gasoline produced by domestic refiners. During 1997 a refinery's annual average for sulfur, T-90, olefins and exhaust benzene emissions may not exceed its individual baseline for these fuel characteristics. Starting in 1998 a refinery's annual average conventional gasoline NO_x and exhaust toxics emissions, calculated using the Complex Model, may not exceed its individual baseline for these fuel characteristics.

2. **Non-certified FRGAS.** Gasoline that meets the quality requirements for RFG, as well as gasoline that is not RFG quality and has not been included in the foreign refiner's NO_x and exhaust toxics compliance calculations based on their individual baseline. Non-certified FRGAS will be regulated through the importer. If the importer classifies it as RFG, it will have to meet the RFG requirements. If the importer classifies it as conventional gasoline, it will have to meet

the importers compliance baseline for conventional gasoline, which in almost all cases is the statutory baseline.

Non-certified FRGAS may be classified by the importer as "gasoline treated as blendstock" (GTAB). The purpose of the GTAB procedures is to enable importers to conduct remedial blending of imported gasoline, or to reclassify gasoline with regard to RFG or conventional gasoline, before imported gasoline is introduced into U.S. commerce. The importer must use GTAB to produce gasoline at a refinery operated by the importer-company. This puts importers on a more equal footing with refiners, who are able to reblend or reclassify gasoline prior to shipping gasoline from the refinery. Importers may not classify certified FRGAS as GTAB, because to do so would result in the same conventional gasoline being included in two compliance calculations. In addition, U.S. importers may not use GTAB procedures to convert certified FRGAS into RFG, for the same reason that domestic regulated parties are not allowed to convert conventional gasoline into RFG. Conversion of conventional gasoline into RFG is prohibited because of concern such conversions could result in degradation of the conventional gasoline pool. For example, in the absence of this constraint a refiner could produce very clean conventional gasoline that in fact meets the RFG requirements, include this gasoline in the refiner's conventional gasoline compliance calculations to offset other dirty conventional gasoline, and then convert this gasoline into RFG. The result of this would be degradation in the average quality of the refiner's conventional gasoline. This same effect would be possible if importers could convert certified FRGAS into RFG.

Monitoring Imported Conventional Gasoline

There was some concern about the possible environmental impact of providing this option to foreign refiners. A foreign refiner may only have an economic incentive to seek an individual baseline if it will be less stringent than the statutory baseline. Gasoline produced by this foreign refiner would then be measured against this less stringent individual baseline. Other imported gasoline would be measured against the statutory baseline through the importer. The potential for the quality of imported gasoline to degrade from an emissions perspective depends to what extent, if any, foreign refiners who produced gasoline in 1990 that was cleaner than the statutory baseline would ship gasoline that is dirtier than what they shipped in 1990.

EPA is addressing these potential environmental concerns in the final rule by:

1. Establishing a benchmark for the quality of imported gasoline. The benchmark for imported gasoline quality is the volume-weighted average of the individual baselines for domestic refiners (the necessary information for establishing a benchmark based on 1990 gasoline imports is not available). The benchmark for NO_x emissions performance is set at the volume weighted average for domestic baselines. In 1995 the volume weighted average for NO_x for imported gasoline was 1415.9 mg/mile, while the statutory baseline was 1461 mg/mile, and the volume weighted average for domestic baselines was 1465 mg/ mile. No benchmark is being set at this time for exhaust toxics emissions performance, as there does not appear to be the same potential for environmental degradation that there could be for NO_x. In 1995, the volume weighted annual average of imported gasoline for exhaust toxics was 86.64 mg/mile. This was cleaner than both

the statutory baseline (104.5 mg/mile) and the volume weighted average for domestic baselines (97.34 mg/mile).

2. Monitoring imported gasoline to determine whether the benchmark has been exceeded. Each year EPA will evaluate the volume weighted annual average quality of the three prior years and compare it to the benchmark.

3. If the benchmark is exceeded, imposing a remedy that compensates for the adverse environmental impact. If the average quality of imported gasoline exceeds the benchmark, NO_x requirements for gasoline imported from refiners without an individual baseline (currently set at the statutory baseline) will increase in stringency the following year by an amount equivalent to the exceedance. If the annual monitoring shows that imported gasoline does not exceed the benchmark, the compliance requirements will be reduced to the statutory baseline for the following year. The more stringent requirements will apply to all imported gasoline except for gasoline produced by foreign refiners with an individual baseline.

Endnotes:

(1) the "56 FR 56694" notation is a reference to the *Federal Register*, volume 56, page 56694. "CR" refers to *Congressional Record*.



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