

**§ 80.230**

**40 CFR Ch. I (7-1-04 Edition)**

(c) If, without merger with, or acquisition of, another business unit, a company with approved small refiner status under §80.235 exceeds 1,500 employees, or a corporate crude capacity of 155,000 bpcd after January 1, 1999, it will be considered a small refiner for the duration of the small refiner program.

(d) Notwithstanding the definition in paragraph (a) of this section, refiners who acquire a refinery after January 1, 1999, 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.

[65 FR 6823, Feb. 10, 2000, as amended at 66 FR 19306, Apr. 13, 2001; 67 FR 38340, June 3, 2002; 67 FR 40182, June 12, 2002]

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

(a) The following are not eligible for the hardship provisions for small refiners:

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

(2) Refiners who exceed the employee or crude oil capacity criteria under §80.225(a) on January 1, 1999, but who meet these criteria after that date, regardless of whether the reduction in employees or crude capacity is due to operational changes at the refinery or a company sale or reorganization;

(3) Importers; and

(4) Refiners who produce gasoline other than by processing crude oil through refinery processing units.

(b)(1) Refiners who qualify as small under §80.225, and subsequently employ more than 1,500 people as a result of merger with or acquisition of or by another entity, are disqualified as small refiners. If this occurs the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(2) Any refiner who qualifies as small under §80.225 may elect to meet the standards under §80.195 by notifying EPA in writing no later than November 15 prior to the year the change will occur.

(3) Any refiner whose status changes under paragraph (b)(1) or (2) of this section shall meet the standards under

§80.195 beginning with the first averaging period subsequent to the status change.

[65 FR 6823, Feb. 10, 2000, as amended at 66 FR 19307, Apr. 13, 2001]

EFFECTIVE DATE NOTE: At 69 FR 39167, June 29, 2004, §80.230 was amended by revising paragraph (b), effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

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(b)(1)(i) Refiners who qualify as small under §80.225 and subsequently cease production of diesel fuel from processing crude oil through refinery processing units, or employ more than 1,500 people or exceed the 155,000 bpcd crude oil capacity limit after January 1, 2004 as a result of merger with or acquisition of or by another entity, are disqualified as small refiners, except this shall not apply in the case of a merger between two previously approved small refiners. If disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(ii) Except as provided under paragraph (b)(1)(iii) of this section, any refiner whose status changes under this paragraph shall meet the applicable standards of §80.195 within a period of up to 30 months of the disqualifying event for any of its refineries that were previously subject to the small refiner standards of §80.240(a). However, such period shall not extend beyond December 31, 2007, or, for refineries for which the Administrator has approved an extension of the small refiner gasoline sulfur standards under §80.553(c), December 31, 2010.

(iii) A refiner may apply to EPA for an additional six months to comply with the standards of §80.195 if more than 30 months will be required for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time. EPA will base its decision to approve additional time on the information provided by the refiner and on other relevant information. In no case will EPA extend the compliance date beyond December 31, 2007, or, for refineries for which the Administrator has approved an extension of the small refiner gasoline sulfur standards under §80.553(c), December 31, 2010.

(iv) During the period of time up to 30 months provided under paragraph (b)(1)(ii) of this section, and any extension provided under paragraph (b)(1)(iii) of this section, the refiner may not generate gasoline sulfur credits under §80.310.

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(2) Any refiner who qualifies as a small refiner under §80.225 may elect to meet the standards under §80.195 by notifying EPA in writing no later than November 15 prior to the year that the change will occur. Any refiner whose status changes under this paragraph (b)(2) shall meet the standards under §80.195 beginning with the first averaging period subsequent to the status change.

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

(a) Applications for small refiner status must be submitted to EPA by December 31, 2000, except for applications submitted pursuant to §80.225(d), which must be submitted by June 1, 2002.

(b) Applications for small refiner status must be sent to: U.S. EPA, Attn: Sulfur Program (6406J), 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: U.S. EPA, Attn: Sulfur Program (6406J), 501 3rd Street, NW, Washington, DC 20001.

(c) The small refiner status application must contain the following information for the company seeking small refiner status, plus any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners:

(1)(i) A listing of the name and address of each location where any employee worked during the 12 months preceding January 1, 1999; the average number of employees at each location based upon the number of employees for each pay period for the 12 months preceding January 1, 1999; and the type of business activities carried out at each location; or

(ii) In the case of a refiner who acquires a refinery after January 1, 1999, or reactivates a refinery that was shutdown between January 1, 1998, and January 1, 1999, a listing of the name and address of each location where any employee of the refiner worked since the refiner acquired or reactivated the refinery; the average number of employees at any such acquired or reactivated refinery during each calendar year since the refiner acquired or reactivated the refinery; and the type of business activities carried out at each location.

(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.

(3) 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 application is true to the best of his/her knowledge.

(4) Name, address, phone number, facsimile number and E-mail address (if available) of a corporate contact person.

(d) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(e) For government-owned refiners, the total employee count includes all government employees.

(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) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(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.

(2) If disapproved, the refiner must comply with the standards in §80.195.

(h) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from EPA the refiner's