

(2) Any 500 ppm sulfur NR or NRLM diesel fuel produced or imported after June 1, 2010 through the use of these credits must—

(i) Bear a unique product code as specified in §80.590; and

(ii) Not be used to sell or deliver diesel fuel into areas specified in §80.510(g)(1) or (g)(2).

(3) No 500 ppm sulfur NRLM credits may be used after May 31, 2014.

[69 FR 39176, June 29, 2004]

EFFECTIVE DATE NOTE: At 69 FR 39176, June 29, 2004, §80.536 was added, effective Aug. 30, 2004.

§§ 80.537–80.539 [Reserved]

GEOGRAPHIC PHASE-IN PROVISIONS

§80.540 How may a refiner be approved to produce gasoline under the GPA gasoline sulfur standards in 2007 and 2008?

(a) A refiner that has been approved by EPA under §80.217 for the geographic phase-in area (GPA) gasoline sulfur content standards under §80.216 may apply to EPA for approval to produce gasoline subject to the GPA standards in 2007 and 2008. Such application shall be submitted to EPA, at the address provided in §80.595(b), by December 31, 2001. A foreign refiner must apply under the provisions of paragraph (n) of this section.

(b) The refiner must submit an application in accordance with the provisions of §§80.595 and 80.596. The application must also include information, as provided in §80.594(c), demonstrating that starting no later than June 1, 2006, all motor vehicle diesel fuel produced by the refinery for United States use will comply with the 15 ppm sulfur content standard under §80.520(a)(1), and that the volume of motor vehicle diesel fuel produced will comply with the volume requirements of paragraph (e) of this section.

(c) The Administrator may approve a refiner's application to produce gasoline subject to the GPA gasoline sulfur content standards in 2007 and 2008 if the provisions of paragraph (b) of this section are satisfied. In approving an application, the Administrator shall establish a motor vehicle diesel fuel volume baseline under §§80.595 and 80.596.

(d) Starting June 1, 2006, and continuing through December 31, 2008, all motor vehicle diesel fuel produced by a refiner that has been approved under paragraph (c) of this section to produce gasoline subject to the GPA gasoline sulfur content standards in 2007 and 2008, must be accurately designated under §80.523 as meeting the 15 ppm sulfur content standard of §80.520(a)(1).

(e) The total volume of motor vehicle diesel fuel produced for use in the United States and designated as meeting the 15 ppm sulfur content standard under paragraph (d) of this section must meet or exceed 85% of the baseline volume established under paragraph (c) of this section, except that for the year 2006, the total volume must meet or exceed 50% of the baseline volume.

(f) Compliance with the volume requirements in paragraph (e) of this section shall be determined on a calendar year basis, except that for the year 2006 compliance shall be determined for the period June 1, 2006 through December 31, 2006.

(g) If a refiner fails to comply with the requirements of paragraph (d) of this section, or if the approval of the application, including the baseline, was based on false or inaccurate information, the approval to produce gasoline subject to the GPA gasoline sulfur content standards under this section during the years 2007 and 2008 shall be void ab initio, and gasoline produced for use in the GPA must meet the gasoline sulfur content standards of subpart H of this Part as if there had been no approval to produce gasoline subject to the GPA gasoline sulfur content standards in 2007 and 2008.

(h) If for any compliance period a refiner fails to meet the volume requirements in paragraph (e) of this section, the approval to produce gasoline subject to the GPA gasoline sulfur content standards shall be void for that compliance period and for all succeeding compliance periods, and gasoline produced for use in the GPA must meet the gasoline sulfur standards under subpart H of this part as if there had been no approval to produce gasoline subject to the GPA gasoline sulfur content standards under this section in 2007 and 2008.

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(i) A refiner that is approved for production of gasoline subject to the GPA gasoline sulfur standards under this section in 2007 and 2008 must meet all applicable recordkeeping and reporting requirements of §§ 80.592, 80.593, and 80.594, and shall meet all the recordkeeping and reporting requirements under §§ 80.219, 80.365 and 80.370.

(j) A refiner approved to produce gasoline subject to the GPA gasoline sulfur standards under this section in 2007 and 2008 may not generate or use credits under § 80.531(a) or (e), or § 80.532 unless the approval is vacated as provided in paragraph (k) of this section.

(k) A refiner may petition the Administrator to vacate approval to produce gasoline subject to the GPA gasoline sulfur content standards in 2007 and 2008. EPA may grant such a petition, effective January 1 of the compliance period following EPA's receipt of such petition (or effective June 1, in 2006, if applicable). Upon such effective date and thereafter, gasoline produced for use in the GPA must meet the gasoline sulfur content standards under subpart H of this Part as if there had been no approval to produce gasoline subject to the GPA gasoline sulfur content standards under this section in 2007 and 2008. Upon such effective date, the refiner shall not be subject to the requirements of this section.

(l) The provisions of this section shall apply separately for each refinery of a refiner.

(m) If any refinery is approved for production of gasoline subject to GPA gasoline sulfur content standards under this section in 2007 and 2008, the GPA downstream gasoline sulfur standard under § 80.220(a)(2) shall apply as follows:

(1) During the period of February 1, 2005 through January 31, 2009, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility shall not exceed 326 ppm.

(2) During the period of March 1, 2005 through February 28, 2009, the sulfur content of GPA gasoline at any downstream location shall not exceed 326 ppm.

(n) A foreign refiner may apply to the Administrator to produce gasoline that

is subject to the gasoline sulfur standards for GPA gasoline under § 80.216 for the compliance years 2007 and 2008. Such application must be submitted to the EPA, at the address in § 80.595(b), by December 31, 2001.

(1) The Administrator may approve such interim GPA gasoline sulfur standards for the foreign refiner provided that the foreign refiner applies for a gasoline sulfur baseline under paragraph (n)(2) of this section and complies with:

(i) The requirements of paragraphs (b) through (l) of this section;

(ii) The requirements for the import of motor vehicle diesel fuel under § 80.620; and

(iii) All applicable gasoline requirements for refiners under subpart H of this Part, including the foreign refiner requirements under § 80.410, the attest requirements of § 80.415, the recordkeeping and reporting requirements of §§ 80.365 and 80.370, the designation and product transfer document requirements of § 80.219, the sampling and testing requirements of § 80.330, and the sample retention requirements of § 80.335.

(2) The refiner must submit an application for a gasoline sulfur baseline under the provisions of §§ 80.216(a), 80.295, and 80.410(b).

(3) After review of the foreign refiner's individual refinery gasoline sulfur baseline, its individual refinery motor vehicle diesel fuel baseline, and other information submitted with the application, the Administrator may approve such baselines and the application for GPA gasoline sulfur standards for 2007 and 2008.

(o) An importer is not eligible for approval to import gasoline subject to the GPA standards in 2007 or 2008 under this section.

EFFECTIVE DATE NOTE: At 69 FR 39177, June 29, 2004, § 80.540 was amended by revising paragraphs (b), (d), (e), and (f), effective Aug. 30, 2004. For the convenience of the user, the revised text is set forth as follows:

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(b) The refiner must submit an application in accordance with the provisions of §§ 80.595

and 80.596. The application must also include information, as provided in §80.594(c), demonstrating that starting no later than June 1, 2006, 95 percent of the motor vehicle diesel fuel produced by the refinery for United States use will comply with the 15 ppm sulfur standard under §80.520(a)(1), and that the volume of motor vehicle diesel fuel produced will comply with the volume requirements of paragraph (e) of this section.

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(d) From June 1, 2006 through December 31, 2008, 95 percent of the motor vehicle diesel fuel produced by a refiner that has been approved under paragraph (c) of this section to produce gasoline subject to the GPA gasoline sulfur standards in 2007 and 2008, must be accurately designated under §80.598 as meeting the 15 ppm sulfur standard of §80.520(a)(1).

(e) The total volume of motor vehicle diesel fuel produced for use in the United States and designated as meeting the 15 ppm sulfur standard under paragraph (d) of this section must meet or exceed 85 percent of the baseline volume established under paragraph (c) of this section, except that for the first compliance period from June 1, 2006 through June 30, 2007, the total volume must meet or exceed 92 percent of the baseline volume.

(f) Compliance with the volume requirements in paragraph (e) of this section shall be determined each compliance period. Annual compliance periods shall be from July 1 through June 30. For the year 2006, the compliance period shall be from June 1, 2006 through June 30, 2007.

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§§ 80.541–80.549 [Reserved]

SMALL REFINER HARDSHIP PROVISIONS

§80.550 What is the definition of a small refiner under this subpart?

(a) A small refiner is defined as any person, as defined by 42 U.S.C. 7602(e), who:

(1) Produces diesel fuel at a refinery by processing crude oil through refinery processing units;

(2) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1999, to January 1, 2000; and

(3) Had an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1999.

(b) For the purpose of determining the number of employees and crude capacity under paragraph (a) of this sec-

tion, the refiner shall include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company in which the parent has 50% or greater ownership, and any joint venture partners.

(c) The definition under paragraph (a) of this section applies to domestic and foreign refiners. For any refiner owned by a governmental entity, the number of employees as specified in paragraph (a) of this section shall include all employees and total crude capacity of the government of which the governmental entity is a part.

(d) Notwithstanding the provisions of paragraph (a) of this section, a refiner that acquires a refinery after January 1, 2000, or reactivates a refinery that was shutdown or was non-operational between January 1, 1999, and January 1, 2000, may apply for small refiner status in accordance with the provisions of §80.551(c)(1)(ii).

(e) *Ineligible parties.* The following are ineligible for the small refiner provisions:

(1) Refiners or refineries built or started up after January 1, 2000;

(2) Persons who exceed the employee or crude oil capacity criteria under this section on January 1, 2000, but who meet these criteria after that date, regardless of whether the reduction in employees or crude oil capacity is due to operational changes at the refinery or a company sale or reorganization;

(3) Importers; and

(4) Refiners who produce motor vehicle diesel fuel other than by processing crude oil through refinery processing units.

(f)(1) Refiners who qualify as small refiners under this section and who subsequently employ more than 1500 people as a result of merger with or acquisition of 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 whose status changes under this paragraph shall comply with the sulfur standard of §80.520(a)(1) beginning January 1 of the calendar year following the disqualifying event in paragraph (f)(1) of this section.