

Environmental Protection Agency

§ 80.1338

§ 80.1230(a) shall be in the form of an extended period of deficit carry-forward, per § 80.1230(c), for such period of time as EPA determines is appropriate.

(2) Approval of a hardship application under this section for relief from the maximum average benzene standard at § 80.1230(b) shall be in the form of a waiver of the standard for such period of time as EPA determines is appropriate.

(3) EPA may deny any application for appropriate reasons, including unacceptable environmental impact.

(d) EPA may impose any other reasonable conditions on relief provided under this section, including rescinding, or reducing the length of, the extended deficit carry-forward period if conditions or situations change between approval of the hardship application and the end of the approved relief period.

§ 80.1336 What if a refiner or importer cannot produce gasoline conforming to the requirements of this subpart?

In extreme, unusual, and unforeseen circumstances (for example, a natural disaster or a refinery fire) that are clearly outside the control of the refiner or importer and that could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refinery or importer to exceed the allowable average benzene levels specified in § 80.1230(a) or (b), as applicable, if—

(a) It is in the public interest to do so;

(b) The refiner or importer exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;

(c) The refiner or importer can show how the requirements at § 80.1230(a) or (b), as applicable, will be achieved as expeditiously as possible;

(d) The refiner or importer agrees to make up any air quality detriment associated with the nonconformity, where practicable; and

(e) The refiner or importer pays to the U.S. Treasury an amount equal to the economic benefit of the nonconformity minus the amount expended making up the air quality detriment

pursuant to paragraph (d) of this section.

SMALL REFINER PROVISIONS

§ 80.1338 What criteria must be met to qualify as a small refiner for the gasoline benzene requirements of this subpart?

(a) A small refiner is any person that demonstrates that it—

(1) Produced gasoline at a refinery by processing crude oil through refinery processing units from January 1, 2005 through December 31, 2005.

(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, 2005 through December 31, 2005.

(3) Had a corporate average crude oil capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 2005.

(4) Following the submission of a small refiner application, pursuant to § 80.1340, has been approved as a small refiner for this subpart.

(b) For the purpose of determining the number of employees and the crude oil capacity under paragraph (a) of this section, the following determinations shall be observed:

(1) The refiner shall include the employees and crude oil capacity of any subsidiary companies, any parent company, subsidiaries of the parent company in which the parent has a controlling interest, and any joint venture partners.

(2) For any refiner owned by a governmental entity, the number of employees and total crude oil capacity as specified in paragraph (a) of this section shall include all employees and crude oil production of the government to which the governmental entity is a part.

(3) Any refiner owned and controlled by an Alaska Regional or Village Corporation organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601) is not considered an affiliate of such entity, or with other concerns owned by such entity, solely because of their common ownership.

(c) Notwithstanding the provisions of paragraph (a) of this section, a refiner that reactivates a refinery that it had previously operated, and that was shut down or non-operational for the entire

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period between January 1, 2005 and December 31, 2005, may apply for small refiner status in accordance with the provisions of § 80.1340.

§ 80.1339 Who is not eligible for the provisions for small refiners?

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

(a) A refiner with one or more refineries built after December 31, 2005.

(b) A refiner that exceeds the employee or crude oil capacity criteria under § 80.1338 but that meets these criteria after December 31, 2005, regardless of whether the reduction in employees or crude capacity is due to operational changes at the refinery or a company sale or reorganization.

(c) Importers.

(d) A refiner that produce gasoline other than by processing crude oil through refinery processing units.

(e)(1) A small refiner approved under § 80.1340 that subsequently ceases production of gasoline from processing crude oil through refinery processing units, employs more than 1,500 people, or exceeds the 155,000 bpcd crude oil capacity limit after December 31, 2005 as a result of merger with or acquisition of or by another entity, is disqualified as a small refiner, except that 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.

(2) Except as provided under paragraph (e)(3) of this section, any refiner whose status changes as specified in paragraph (e)(1) under this paragraph (b) shall meet the applicable standards of § 80.1230 within 30 months of the disqualifying event for all its refineries. However, such period shall not extend beyond December 31, 2014.

(3) A refiner may apply to EPA for an additional six months to comply with the standards of § 80.1230 if it believes that 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

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information provided by the refiner and on other relevant information. In no case will EPA extend the compliance date beyond December 31, 2014.

(4) During the period provided under paragraph (e)(2) of this section, and any extension provided under paragraph (e)(3) of this section, the refiner may not generate gasoline benzene credits under § 80.1275 or § 80.1290.

(f) A small refiner approved under § 80.1340 which notifies EPA that it wishes to withdraw its small refiner status pursuant to § 80.1340(g).

§ 80.1340 How does a refiner obtain approval as a small refiner?

(a) Applications for small refiner status must be submitted to EPA by December 31, 2007.

(b) For U.S. Postal delivery, applications for small refiner status must be sent to: Attn: MSAT2 Benzene, Mail Stop 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial delivery: MSAT2 Benzene, 202-343-9038, U.S. Environmental Protection Agency, 1310 L Street, NW., Washington, DC 20005.

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

(1) *Employees.* For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture. For government-owned refiners, the total employee count includes all government employees.

(i) Pursuant to paragraph (c) of this section, a listing of each company facility and each facility's address where any employee, as specified in paragraph (a)(1) of this section, worked during the 12 months preceding January 1, 2006.

(ii) The average number of employees at each facility based upon the number of employees for each pay period for the 12 months preceding January 1, 2006.

(iii) The type of business activities carried out at each location.