

(2) The refinery must notify EPA under which compliance period specified in paragraph (c)(1) of this section it will begin compliance.

(3) Beginning with the compliance period chosen pursuant to paragraph (c)(2) of this section—

(i) For early compliance approved for a refinery's RFG pool, the toxics air pollutants emissions performance requirements specified in §§ 80.41(e)(1) and (f)(1) and 80.815 shall not apply to the reformulated gasoline produced by the refinery.

(ii) For early compliance approved for a refinery's CG pool, the annual average exhaust toxics emissions requirements specified in §§ 80.101(c)(2) and 80.815 shall not apply to conventional gasoline produced by the refinery.

(4) Refineries approved for early compliance under this section may not generate early credits under § 80.1275.

(d) If EPA finds that a refiner provided false or inaccurate information in its application for early compliance, the early compliance approval will be void *ab initio*.

**§ 80.1335 Can a refiner seek relief from the requirements of this subpart?**

(a) A refiner may apply for relief from the requirements specified in § 80.1230(a) or (b) for a refinery, if it can show that—

(1) Unusual circumstances exist that impose extreme hardship and significantly affect the ability to comply with the gasoline benzene standards at § 80.1230(a) or (b) by the applicable date(s); and

(2) It has made best efforts to comply with the requirements of this subpart.

(b) A refiner must apply for and be approved for relief under this section.

(1) An application must include the following information:

(i) A plan demonstrating how the refiner will comply with the requirements of § 80.1230(a) or (b), as applicable, as expeditiously as possible. The plan shall include a showing that contracts are or will be in place for engineering and construction of benzene reduction technology, a plan for applying for and obtaining any permits necessary for construction, a description of plans to obtain necessary capital, and a detailed estimate of when the re-

quirements of § 80.1230(a) or (b), as applicable, will be met.

(ii) A detailed description of the refinery configuration and operations including, at minimum, the following information:

(A) The refinery's total reformer unit throughput capacity;

(B) The refinery's total crude capacity;

(C) Total crude capacity of any other refineries owned by the same entity;

(D) Total volume of gasoline production at the refinery;

(E) Total volume of other refinery products;

(F) Geographic location(s) where the refinery's gasoline will be sold;

(G) Detailed descriptions of efforts to obtain capital for refinery investments;

(H) Bond rating of entity that owns the refinery; and

(I) Estimated capital investment needed to comply with the requirements of this subpart.

(iii) For a hardship related to complying with the requirement at § 80.1230(a), detailed descriptions of efforts to obtain credits, including the prices of credits available, but deemed uneconomical by the refiner.

(2) Applicants must also provide any other relevant information requested by EPA.

(3) An application for relief from the requirements specified in § 80.1230(b) must be submitted to EPA by January 1, 2008, or by January 1, 2013 for small refiners approved under § 80.1340.

(c)(1) Approval of a hardship application under this section for relief from the annual average benzene standard at § 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

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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 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