

credit be transferred more than twice before being used or terminated.

(iv) The credit transferor has applied any gasoline benzene credits necessary to meet its own annual compliance requirements (including any deficit carried forward, pursuant to §80.1230(c), if applicable) before transferring any gasoline benzene credits to any other refiner or importer.

(v) The credit transferor does not create a deficit as a result of a credit transfer.

(vi) The transferor supplies records to the transferee indicating the year the gasoline benzene credits were generated, the identity of the refiner (and refinery) or importer that generated the gasoline benzene credits, and the identity of the transferring entity if it is not the same entity that generated the gasoline benzene credits.

(2) In the case of gasoline benzene credits that have been calculated or created improperly, or that EPA has otherwise determined to be invalid, the following provisions apply:

(i) Invalid gasoline benzene credits cannot be used to achieve compliance with the gasoline benzene content requirement of §80.1230(a), regardless of the transferee's good-faith belief that the gasoline benzene credits were valid.

(ii) The refiner or importer that used the gasoline benzene credits and any transferor of the gasoline benzene credits must adjust their credit records, reports, and compliance calculations as necessary to reflect the proper gasoline benzene credits.

(iii) Any properly created gasoline benzene credits existing in the transferor's credit balance following the corrections and adjustments specified in paragraph (b)(2)(ii) of this section must first be applied to correct the invalid transfers to the transferee, before the transferor uses, trades or banks the gasoline benzene credits.

(c) *Credit life.* (1)(i) Early credits, per §80.1275, may be used for compliance purposes under §80.1240(a) for any of the following annual averaging periods: 2011, 2102, 2013.

(ii) Early credits, per §80.1275, may be used for compliance purposes under §80.1240(a) by small refiners approved under §80.1340 for any of the following averaging periods: 2015, 2016, 2017.

(2)(i) Standard credits, per §80.1290, may be used for compliance purposes under §80.1240(a) within five years from the year they were generated, except as noted under paragraph (c)(2)(ii) of this section. Example: Standard credits generated during 2011 may be used to achieve compliance under §80.1240(a) for any calendar year averaging period prior to the 2017 averaging period.

(ii) Standard credits, per §80.1290, may be used for compliance purposes under §80.1240(a) within seven years from the year they were generated if traded to and ultimately used by a small refiner approved under §80.1340. Example: Standard credits generated in 2011 may be used to achieve compliance under §80.1240(a) for any calendar year averaging period prior to the 2019 averaging period if traded to and ultimately used by a small refiner approved under §80.1340.

(d) *Deficit provision limitation.* A refiner or importer possessing gasoline benzene credits must use all gasoline benzene credits in its possession before applying the benzene deficit provisions of §80.1230(c).

#### HARDSHIP PROVISIONS

#### § 80.1334 What are the requirements for early compliance with the gasoline benzene program?

(a)(1) A refinery may comply with the benzene requirements at §80.1230 for its RFG and/or conventional gasoline (CG) prior to the 2011 compliance period if it applies for this early compliance option as specified in paragraph (b) of this section, and is approved by EPA.

(2) Only refineries that produce gasoline by processing crude and/or intermediate feedstocks through refinery processing units may apply for this early compliance option.

(b) Refiners must submit an application in order to be considered for early compliance as described in this section.

(1) Applications for early compliance as described in this section must be submitted to EPA by December 31, 2007.

(2) Applications must be sent to: U.S. EPA, NVFEL-ASD, Attn: MSAT2 Early Compliance, 2000 Traverwood Dr., Ann Arbor, MI 48105.

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(3) Application must be made separately for a refinery's RFG and CG pools.

(4) The early compliance application must show that all the following criteria are met:

(i) For an RFG early compliance application—

(A) The refinery's RFG baseline value under § 80.915 is greater than or equal to 30 percent reduction.

(B) The refinery's 2003 RFG annual average benzene concentration was less than or equal to 0.62 vol%.

(C) The refinery's 2003 RFG annual average sulfur concentration was less than or equal to 140 ppm.

(D) The refinery's 2003 RFG annual average MTBE concentration was greater than or equal to 6 vol%.

(ii) For a CG early compliance application—

(A) The refinery's CG baseline under § 80.915 is less than or equal to 80 mg/mile.

(B) The refinery's 2003 CG annual average benzene concentration was less than or equal to 0.62 vol%.

(C) The refinery's 2003 CG annual average sulfur concentration was less than or equal to 140 ppm.

(D) The refinery's 2003 CG annual average MTBE concentration was greater than or equal to 6 vol%.

(5) In addition, the application must demonstrate that the refinery has extremely limited ability to adjust its operations in order to comply with its applicable RFG or CG toxics performance requirements under § 80.815.

(6) The refiner must provide additional information as requested by EPA.

(c)(1) If approved for early compliance with the provisions of this subpart, the refinery may comply with the provisions of § 80.1230 as follows:

(i) For the compliance period beginning January 1, 2007, and each annual compliance period through 2010; or

(ii) For the compliance period beginning January 1, 2008, and each annual compliance period through 2010.

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