

## § 80.217

## 40 CFR Ch. I (7–1–10 Edition)

gasoline subject to the standards under paragraphs (a) and (b) of this section.

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

### § 80.217 How does a refiner or importer apply for the GPA standards?

(a) To apply for the GPA standards under § 80.216, a refiner or importer must submit an application in accordance with the provisions of § 80.290.

(b) Applications under paragraph (a) of this section must be submitted by May 1, 2001.

(c)(1) If approved, EPA will notify the refiner or importer of each refinery's or the importer's annual average sulfur standard for gasoline produced for use in the GPA for the 2004 through 2006 annual averaging periods.

(2) If disapproved, the refiner or importer must comply with the standards in § 80.195 for gasoline produced for use in the GPA.

(d) If EPA finds that a refiner or importer provided false or inaccurate information on its application under this section, upon notice from EPA, the refiner's or importer's application will be void *ab initio*.

[65 FR 6823, Feb. 10, 2000, as amended at 66 FR 19306, Apr. 13, 2001]

### § 80.218 [Reserved]

### § 80.219 Designation and downstream requirements for GPA gasoline.

The requirements and prohibitions specified in this section apply during the period January 1, 2004 through December 31, 2006.

(a) *Designation.* Any refiner or importer shall designate any gasoline produced or imported that is subject to the standards under § 80.216 as "GPA" gasoline.

(b) *Product transfer documents.* (1) On each occasion that any person transfers custody or title to gasoline designated as GPA gasoline, other than when gasoline is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the transferor shall provide to the transferee documents that include the following information:

(i) Identification of the gasoline as being GPA gasoline;

(ii) A statement that the gasoline may not be distributed or sold for use outside the geographic phase-in area.

(2) Except for transfers to truck carriers, retailers and wholesale purchaser-consumers, product codes may be used to convey the information required by paragraph (b)(1) of this section if such codes are clearly understood by each transferee.

(3) The requirements under paragraph (b)(1) of this section are in addition to the requirement under § 80.210(e), where appropriate, to identify gasoline as being S-RGAS.

(c) *GPA gasoline use prohibitions.* (1) All parties in the distribution system, including refiners, importers, distributors, carriers, oxygenate blenders, retailers and wholesale purchaser-consumers, are prohibited from:

(i) Selling, offering for sale, dispensing, distributing, storing or transporting GPA gasoline for use outside the geographic phase-in area; and

(ii) Commingling GPA gasoline with gasoline not designated as GPA gasoline unless the mixture is classified as GPA gasoline.

(2) Gasoline not designated as GPA gasoline may be distributed or sold for use in the geographic phase-in area.

### § 80.220 What are the downstream standards for GPA gasoline?

(a) *GPA gasoline.* (1) During the period February 1, 2004 through January 31, 2005, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and during the period March 1, 2004 through February 28, 2005, the sulfur content of GPA gasoline at any downstream location shall not exceed 378 ppm.

(2) During the period February 1, 2005 through January 31, 2007, the sulfur content of GPA gasoline at any downstream location other than at a retail outlet or wholesale purchaser-consumer facility, and during the period March 1, 2005 through February 28, 2007, the sulfur content of GPA gasoline at any downstream location shall not exceed 326 ppm.

(b) *GPA gasoline mixed with S-RGAS.* Notwithstanding the requirements in

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paragraph (a) of this section, the sulfur standard applicable to a mixture of GPA gasoline and S-RGAS gasoline at a downstream location shall be the greater of the standard under paragraph (a) of this section or the standard determined under § 80.210.

(c) Notwithstanding paragraph (a) of this section, the sulfur content standard of 326 ppm at any downstream location may be extended as provided under § 80.540(m).

[65 FR 6823, Feb. 10, 2000, as amended at 66 FR 5136, Jan. 18, 2001]

### HARDSHIP PROVISIONS

#### § 80.225 What is the definition of a small refiner?

(a) A *small refiner* is defined as any person, as defined by 42 U.S.C. 7602(e), who: (1)(i) Produces gasoline at a refinery by processing crude oil through refinery processing units;

(ii) Employed an average of no more than 1,500 people, based on the average number of employees for all pay periods from January 1, 1998, to January 1, 1999; and

(iii) Had an average crude capacity less than or equal to 155,000 barrels per calendar day (bpcd) for 1998.

(2) For the purpose of determining the number of employees and crude capacity under paragraph (a)(1) of this section, the refiner shall include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. A subsidiary under this paragraph means any subsidiary in which the refiner or parent company has a 50% or greater ownership interest.

(b) 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 of the governmental entity.

(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)(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