M820 Flat-Size Mail

1.0 BASIC STANDARDS

* * * * *

1.5 Package Preparation

[Amend 1.5 by replacing ''FSM 881'' with ''AFSM 100''.]

1.6 Sack Preparation

[Amend 1.6 by replacing ''FSM 881'' with ''AFSM 100''.]

* * * * *

1.11 Tray-Based Preparation

[Amend 1.11 by replacing ''FSM 881'' with ''AFSM 100''.]

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R RATES AND FEES

* * * * *

R200 Periodicals

1.0 OUTSIDE-COUNTY—EXCLUDING SCIENCE-OF-AGRICULTURE

* * * * *

1.2 Piece Rates

* * * * *

[Amend the footnote by replacing ''FSM 881'' with ''AFSM 100'' and ''16 ounces'' with ''20 ounces'' to read as follows:]

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces for enveloped, bound, and polywrapped pieces (AFSM 100) and 6 pounds (FSM 1000).

* * * * *

2.0 OUTSIDE-COUNTY-SCIENCE-OF-AGRICULTURE

* * * * *

2.2 Piece Rates

* * * * *

[Amend the footnote by replacing ''FSM 881'' with ''AFSM 100'' and ''16 ounces'' with ''20 ounces'' to read as follows:]

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces for enveloped, bound, and polywrapped pieces (AFSM 100) and 6 pounds (FSM 1000).

* * * * *

3.0 IN-COUNTY

* * * * *

1.2 Piece Rates

* * * * *

[Amend the footnote by replacing ''FSM 881'' with ''AFSM 100'' and ''16 ounces'' with ''20 ounces'' to read as follows:]

1. Lower maximum weight limits apply: letter-size at 3 ounces (or 3.3 ounces for heavy letters); flat-size at 20 ounces for enveloped, bound, and polywrapped pieces (AFSM 100) and 6 pounds (FSM 1000).

An appropriate amendment to 39 CFR 111.3 will be published in the **Federal Register** to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–14824 Filed 6–11–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[AMS–FRL–7221–9]

RIN 2060–AJ71

Control of Air Pollution from New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to clarify, correct, amend, and revise certain provisions of the Tier 2/Gasoline Sulfur regulations (February 10, 2000), hereinafter referred to as the Tier 2 rule. First, today's action corrects typographical errors and makes other minor revisions to clarify the regulations governing compliance with the Tier 2 rule. Second, it modifies the effective date of the regulatory butane test method for determining the sulfur content of butane, a gasoline blendstock. Third, today's rule modifies the Geographic Phase-in Area (GPA) program by replacing the variable standard for GPA gasoline with a flat average standard of 150 ppm sulfur. Fourth, it allows an approved small refiner, under limited circumstances, to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Finally, it amends certain provisions of the small refiner and Averaging, Banking, and Trading (ABT) programs as well as compliance and enforcement provisions to assist regulated entities with program implementation and compliance.

DATES: This direct final rule is effective September 10, 2002, without further notice, unless we receive adverse comments or a request for a public hearing by July 12, 2002. Should we receive any adverse comments on this direct final rule, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: *Comments:* All comments and materials relevant to today's action should be submitted to Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW., Washington, DC 20460.

Docket: Materials related to this rulemaking are available at EPA's Air Docket for review at the above address (on the ground floor in Waterside Mall) from 8 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR Part 2.

FOR FURTHER INFORMATION CONTACT: Mary Manners, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail *manners.mary@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without a prior proposal because we view this action as noncontroversial and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to adopt the provisions in this Direct Final rule if adverse comments are filed. This rule will be effective on September 10, 2002 without further notice unless we receive adverse comment or a request for a public hearing by July 12, 2002. If we receive adverse comment on one or more distinct amendments, paragraphs, or sections of this rulemaking, we will publish a timely withdrawal in the **Federal Register** indicating which provisions are being withdrawn due to adverse comment. We may address all adverse comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Any distinct amendment, paragraph, or section of today's rulemaking for which we do not receive adverse comment will become effective on the date set out above, notwithstanding any adverse comment on any other distinct amendment, paragraph, or section of today's rule.

Regulated Entities

This action will affect you if you produce, distribute, or sell gasoline.

The table below gives some examples of entities that may have to comply with the regulations. However, since these are only examples, you should carefully examine these and other existing regulations in 40 CFR part 80. If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refiners
Industry	422710	5171	Gasoline Marketers and Distributors
	422720	5172	
Industry	484220	4212	Gasoline Carriers
	484230	4213	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's action is available electronically on the day of publication from EPA's Federal Register Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web Site: *http://www.epa.gov/docs/fedrgstr/epa-air/* (Either select a desired date or use the Search feature.)

Tier 2/Gasoline Sulfur home page: *http://www.epa.gov/otaq/tr2home.htm*

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc., may occur.

Outline of This Preamble

I. Corrections of Typographical Errors and Other Minor Revisions
II. Effective Date for Butane Test Method
III. Standards and Compliance for Refiners, Importers, and Individual Refineries
A. Parent Company Compliance with the Corporate Pool Average Standards
B. Partially-Owned Refineries
C. Using Credits and Allotments to Achieve Compliance in 2005
IV. Standards and Compliance for Refiners/Importers That Provide Gasoline to the Geographic Phase-in Area
A. Standards for Gasoline Sold in the Geographic Phase-in Area
B. Credit Generation Beginning in 2004
C. Compliance with the Corporate Pool Average Standard by GPA Gasoline Producers
V. Small Refiners
A. Subsidiary Ownership
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VI. Allotments and Credits
A. Generation of Credits in 2000
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C. Oxygenate Blenders
D. Conversion of Allotments to Credits
E. Deletion of the Discount Factor for Type A Allotments
F. Standard Applicable Under § 80.310
VII. Downstream Standards and Compliance
A. Test Requirements for S–RGAS and Non–S–GAS Combined to Produce Mid-Grade Gasoline
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VIII. Compliance Requirements and Enforcement
A. Liability for Geographic Phase-In Area (GPA) Gasoline
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C. Attest Engagement Requirements
IX. Administrative Requirements
A. Administrative Designation and Regulatory Analysis
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C. Paperwork Reduction Act
D. Intergovernmental Relations
1. Unfunded Mandates Reform Act
2. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
3. Executive Order 13132 (Federalism)
E. Executive Order 13211: Energy Effects
F. National Technology Transfer and Advancement Act
G. Executive Order 13045: Children's Health Protection
H. Congressional Review Act
X. Statutory Provisions and Legal Authority

I. Corrections of Typographical Errors and Other Minor Revisions

Today's rule finalizes corrections of typographical errors and other minor revisions as described in the following chart. These revisions do not change the substance or intent of the sulfur regulations.

§ 80.46(h)	Revised to add ASTM standard method D 3246–96, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry,'' which was inadvertently removed in a prior rule-making action.
§ 80.195(c)(4)	Revised the wording of § 80.195(c)(4) for clarity. This revision does not change the substance or meaning of this provision.
§ 80.205(a)	Revised to change ''value'' to ''level'' for purposes of consistency with the language of other regulatory provisions. This revision does not change the substance or meaning of this provision.
§ 80.216(f)(1)	Revised to change ''§ 80.219'' to ''§ 80.80.219(a)'' for clarity.
§ 80.216(f)(2)	Revised to change ''§ 80.219'' to ''§ 80.219(a)'' and add the words ''including GPA'' for clarity.
§ 80.275(a)(2)(i)	Revised to correct a typographical error in the equation. The equation includes the term ''SA_a'' which should be ''S_a''.
§ 80.275(a)(2)(v)	Revised to correct a typographical error in the equation. The equation includes the Term Sa, which should be S_a.
§ 80.275(h)	Added paragraph (h) to clarify that allotments and credits under § 80.275 are expressed in ppm-gallons to be consistent with regulatory intent and other regulatory provisions.

§ 80.370(a)(4)	Revised to change the word ''content'' to ''level'' for consistency with other regulatory provisions. This revision does not change the substance or meaning of this provision.
§ 80.410(h)(7)(ii)	Revised to add reference to § 80.415 for clarity.
§ 80.415(g)(4)	Revised to add a parentheses at the end of the provision which was omitted in the final rule.

II. Effective Date for Butane Test Method

The Tier 2 rule amended 40 CFR 80.46(a) to require the use of ASTM–D 3246–96 to determine the sulfur content of butane. However, we did not intend for this requirement to apply until January 1, 2004, when refiners that produce gasoline by blending butane into previously certified gasoline must comply with a butane sulfur content standard. As a result, today's rule modifies § 80.46(a) to clarify that the compliance date of the regulatory butane test method, ASTM D 3246–96, is January 1, 2004. In the absence of today's clarification, the compliance date under the Tier 2 rule for the butane test method requirement would be incorrectly stated as April 10, 2000, the effective date of the Tier 2 rule.

III. Standards and Compliance for Refiners, Importers and Individual Refineries

A. Parent Company Compliance With the Corporate Pool Average Standards

The preamble to the Tier 2 rule states that, for purposes of compliance with the corporate pool average standards in 2004 and 2005, a parent company is considered to be the refiner of any refinery facilities owned by wholly-owned [1] subsidiaries of the parent company. As such, a parent company must comply with the corporate pool average standards for any gasoline produced at the refineries owned by its wholly-owned subsidiaries, as well any gasoline produced at any refineries it owns. *See* 65 FR at 6755 (February 10, 2000). The regulations at § 80.195(c), however, do not contain language to implement this requirement. As a result, today's rule adds §§ 80.195(c)(6)(i) and (ii) to include such language. We believe, however, in the situation described above (i.e., where refineries are wholly-owned by a parent company), the parties (i.e., parent and subsidiaries) should have the option to demonstrate compliance with the corporate pool average standards either on a corporate parent level or a subsidiary level. Under this approach, a parent company may: (1) Demonstrate compliance with the corporate pool average standards for all of the gasoline produced at refineries owned by its wholly-owned subsidiaries as well as the refineries owned by the parent company itself, or (2) be deemed in compliance if it demonstrates compliance for the gasoline produced at its own refineries and each wholly-owned subsidiary demonstrates compliance for the gasoline produced at its own refineries. The environmental benefits of the sulfur rule will not be compromised by allowing this option, since compliance on a subsidiary level would result in the corporate pool average standards being met by a greater number of pools with fewer refineries in each pool over which to average the sulfur content. Today's rule, therefore, also adds § 80.195(c)(6)(iii) to provide for this option. Where the parent company opts to have each subsidiary comply individually, the parent company would remain liable for any violations by the subsidiary. *See* § 80.395(a)(11).

A foreign parent company may demonstrate compliance with the corporate pool average standards for all of the gasoline produced at refineries owned by the foreign parent company's wholly-owned U.S. subsidiaries, or each U.S. subsidiary owned by the foreign parent company may demonstrate compliance for its own refineries. Where the foreign parent company opts to demonstrate compliance for its wholly-owned U.S. subsidiaries, any gasoline imported into the U.S. that was produced at the foreign parent company's foreign refineries, or at foreign refineries owned by foreign subsidiaries of the foreign parent company, would not be included in the foreign parent company's corporate pool compliance calculations, since the regulations provide that the sulfur standards, including the corporate pool average standards, are to be met by the importer for all imported gasoline. *See* § 80.195(a)(4). Like a domestic parent company, where parties opt to have each wholly-owned U.S. subsidiary comply individually, the foreign parent company would remain liable under § 80.395(a)(11) for any violations by the subsidiary.

Today's rule also adds language to the reporting provisions in § 80.370(c) to address the corporate pool compliance options discussed above. Where a parent company chooses to comply for the refineries of its wholly-owned subsidiaries, today's rule requires such parent company to identify in its corporate pool average reports to EPA all refinery facilities and subsidiaries wholly-owned by the parent company, and any refinery facilities owned by the parent company's subsidiaries (in the case of a foreign parent company, any U.S. refinery facilities owned by the foreign parent company and any U.S. subsidiaries wholly-owned by the foreign parent company, and any refinery facilities owned by the foreign parent company's U.S. subsidiaries). Where the parent company's wholly-owned subsidiaries comply with the corporate pool average standards individually, each subsidiary must submit the required corporate pool annual compliance reports for its own refineries and identify in the reports the parent company and each refining facility owned by the subsidiary.

B. Partially-Owned Refineries

In some situations a refinery may be owned by more than one party. The Tier 2 rule specifically addresses situations in which a refinery is owned by a joint venture. *See* § 80.195(c)(5). EPA considers a joint venture to be a situation in which two or more parties collectively own and operate one or more refineries. *See* 65 FR 6755. EPA expects that most cases of shared refinery ownership will be considered joint ventures under the regulations. There are situations, however, where a refinery is owned by more than one party, but not all parties participate in the refinery's operation. Although in this situation the joint owners are not considered a joint venture under the regulations, such a refinery is considered a separate entity and the refiner of that refinery is the business entity consisting of the joint owners. We believe that, in such a situation, one of the owners should be allowed to include the refinery in its corporate pool for purposes of compliance with the corporate pool average standards, as the regulations allow in joint venture situations. As a result, today's rule adds § 80.195(c)(5)(iii) to allow a refinery that is collectively owned to be included in

[1] Compliance with the corporate pool average standards for partially owned refineries is discussed in preamble section III.B. below. Note that while a parent company is responsible for its wholly-owned subsidiaries for purposes of compliance with the corporate pool average standards, subsidiaries in which a refiner has a 50 percent or greater ownership interest must be included in a refiner's employee and crude capacity data for purposes of meeting the employee and crude capacity criteria for small refiner status under § 80.225(a). This difference in the way subsidiaries are treated under the corporate pool and small refinery provisions is due to the different purposes of these provisions. For a further discussion of the treatment of subsidiaries under the small refiner provisions, see preamble section V of today's rule.

one of the owner's corporate pool for purposes of compliance with the corporate pool average standards. Today's rule also revises § 80.395(a)(12) (providing for joint venture liability) to include liability for business entities consisting of joint owners of a refinery or refineries.

C. Using Credits and Allotments To Achieve Compliance in 2005

The regulations currently require a refiner or importer, in 2005, to demonstrate compliance with the 90 ppm corporate pool average standard by calculating its actual corporate average sulfur level using the actual sulfur levels of each batch of gasoline and then applying allotments, as necessary, to meet the 90 ppm standard. Credits may not be used to achieve compliance with the corporate pool average standard. See § 80.315(c)(4). The regulations also require a refiner for each refinery, or an importer, beginning in 2005, to demonstrate compliance with the refinery or importer average standard by calculating the actual refinery or importer sulfur level using the actual sulfur levels of each batch of its gasoline, and applying credits, as necessary, to meet the 30 ppm refinery average standard. The regulations identify the corporate pool average and refinery average standards as two separate standards and refiners and importers are required to comply with each standard independently.

In 2005 only, refiners and importers may use allotments as well as credits to demonstrate compliance with the refinery or importer average standard.[2] See § 80.195(b)(4). These credits or allotments may be obtained from any source. A refiner with more than one refinery may use credits generated by one or more of its refineries that have an average sulfur level below 30 ppm toward meeting the refinery average standard at one of the other refineries in the refiner's corporate pool. Alternatively, the refinery may choose to bank or sell its credits, as permitted by the regulations. In 2005, the same allotments used to demonstrate compliance with the corporate pool standard may be used by a refinery in the pool toward its demonstration of compliance with the refinery average standard, or some of the allotments may be used by one refinery and the remainder used by another refinery or refineries in the pool. For example, a refiner with two refineries who obtains 30 allotments to achieve compliance with the corporate pool standard may also apply all 30 allotments to one refinery, or some of the allotments to each of the two refineries, toward meeting the refinery average standard (e.g., 15 allotments to each refinery; 20 allotments to one refinery and 10 allotments to the other; etc.). The current regulations, however, do not clearly address how allotments may be used to demonstrate compliance with the corporate pool average standard and the refinery average standard in 2005. As a result, today's rule adds § 80.195(b)(4) to make this clarification.[3]

[2] Note, however, that allotments may be converted to credits and used to demonstrate compliance with the refinery or importer average standard as provided under § 80.275(e).

[3] The preamble to the Tier 2 rule states that, in 2005, a refiner first must demonstrate compliance with the corporate pool average standard of 90 ppm, and then demonstrate compliance with the refinery average standard using a maximum of 90 ppm as the average sulfur level for each refinery, and applying credits to bring each refinery's average down to 30 ppm. See 65 FR 6760. In a Question and Answer document dated May 2000, we indicated that this preamble discussion is not consistent with the manner in which compliance is demonstrated under the regulations; i.e., compliance with the corporate pool average standards and with the refinery average standards is demonstrated separately, and refiners are required to use actual sulfur levels in computing the refinery average, as compared to using the presumed levels of 90 ppm for each refinery after demonstrating compliance with the corporate pool average standard. As a result, we withdrew the preamble discussion as guidance for interpreting the regulations on this particular issue. We stated that the regulations do not impose any particular priority on compliance with the corporate average and refinery average standards in 2005. Contrary to statements in the preamble, refiners need not first demonstrate compliance with the corporate pool average standard; rather, each standard is independent of the other and must be met as such.

IV. Standards and Compliance for Refiners/Importers That Provide Gasoline to the Geographic Phase-in Area

A. Standards for Gasoline Sold in the Geographic Phase-in Area

In the Tier 2 rule, we established a geographic area in which the low sulfur gasoline program will be phased-in differently than the national program. This program, referred to as the Geographic Phase-In Area (GPA) program, covers seven states in the Rocky Mountains and Upper Great Plains,[4] as well as Alaska.

The GPA program provides refiners additional flexibility in complying with the requirements of the low sulfur gasoline program. More specifically, the program provides that refiners may temporarily meet less stringent standards from 2004 through 2006 for gasoline sold in the GPA. Since the low sulfur gasoline standards under the national program require compliance with a 30 ppm refinery average standard and an 80 ppm cap in 2006, the geographic phase-in provides an additional year to reach those standards. This extra year and the somewhat less stringent standards during the phase-in provide the refining industry the opportunity for a more orderly transition to the 30/80 ppm standards in 2007.

In the First Amendment to the Tier 2 rule (66 FR 19296, April 13, 2001), we identified 74 counties in six states that adjoin the core GPA states which should be included in the GPA. The intention of this amendment was to ensure a smooth transition to low sulfur gasoline nationwide and to mitigate the potential for gasoline supply shortages. The amended GPA is shown in Figure 1 below.[5]

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[4] Colorado, Idaho, Montana, New Mexico, North Dakota, Utah, and Wyoming.

[5] The eight core GPA states contain a number of American Indian reservations. These reservations are fully included in the GPA under today's action. The adjacent counties discussed above also contain 25 American Indian reservations. If a reservation is only partly within a GPA state or adjacent county, it is considered fully in the area for purposes of the GPA program. This is consistent with the inclusion of entire states or counties in the program.

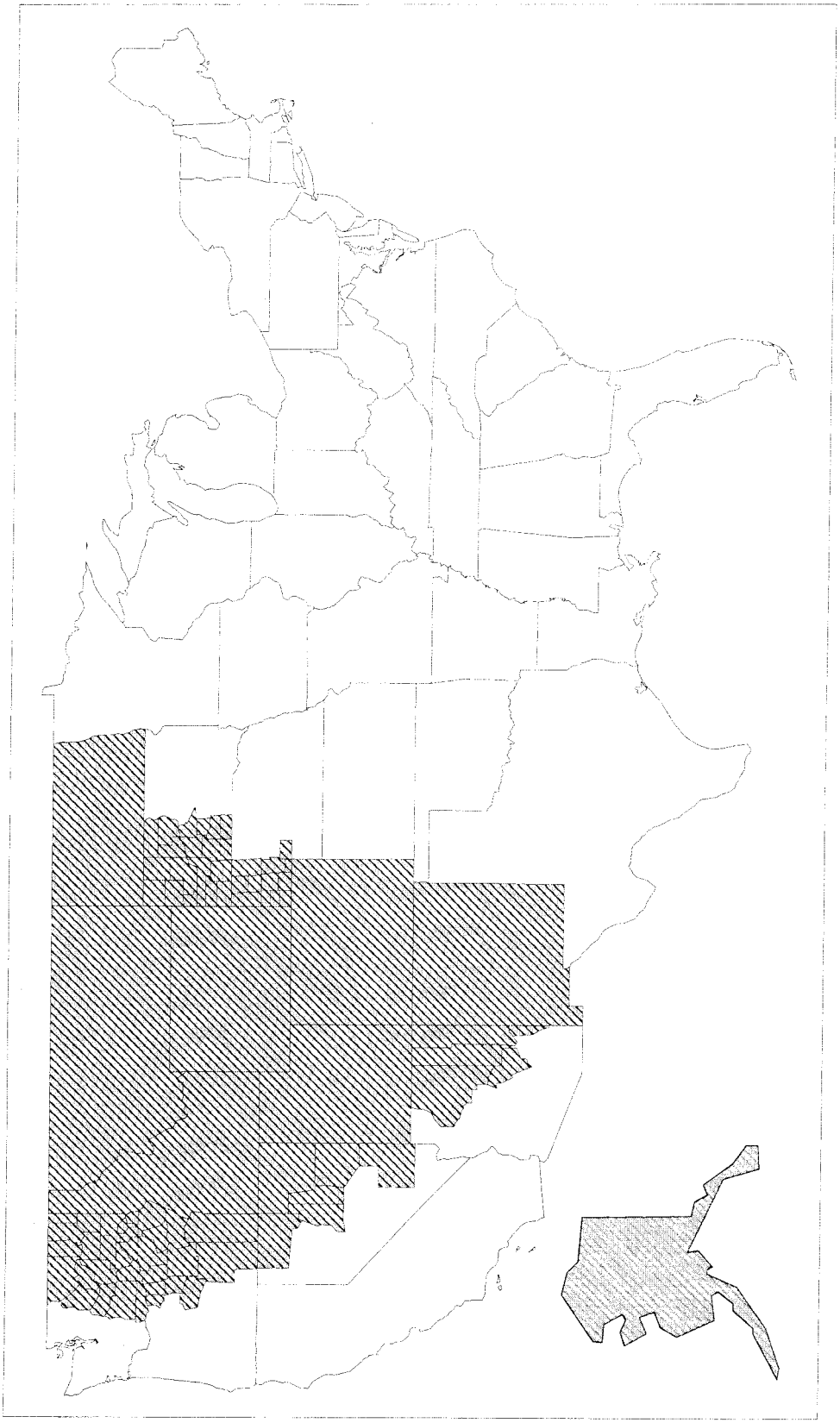

Figure 1: Geographic Phase-in Area

BILLING CODE 6560–50–C

The requirements for gasoline sold in the GPA, as prescribed by the Tier 2 rule, are summarized in Table 1 below. Gasoline produced by any refiner and/

or importer can be sold in the GPA provided that the refiner and/or importer registers with us (See § 80.217) and sells gasoline within the GPA that is consistent with the requirements specified in the regulations.

TABLE 1.—GASOLINE SULFUR STANDARDS FOR THE GEOGRAPHIC PHASE-IN AREA

[Excludes small refiners]

Compliance as of:	2004	2005	2006
Refinery GPA Gasoline Average,[a] ppm	150	150	150
Corporate Pool Average,[b] ppm	120	90	Not Applicable
Per-Gallon Cap,[c] ppm	300	300	300

NOTES

[a] The refinery average standard for GPA gasoline is the most stringent of: 150 ppm; the refinery 1997–1998 baseline plus 30 ppm; or the sulfur level from which early credits were generated plus 30 ppm. Refiners can use credits or allotments to meet the average.

[b] Applies only to refiners/importers which sell more than 50 percent of their gasoline outside the GPA.

[c] In 2004, both GPA and Non-GPA gasoline may have a sulfur content as high as 350 in which case the refinery or importer becomes subject to a correspondingly more stringent cap standard in 2005.

The Tier 2 rule (See § 80.216(a)) states that those refiners or importers that sell gasoline to the GPA, regardless of whether they are located within or outside of the area, have refinery/importer standards for gasoline sold within the GPA that are equal to the least of (1) 150 ppm, (2) the refinery's or importer's 1997–98 average sulfur level plus 30 ppm or (3) the refinery's or importer's lowest actual annual sulfur level plus 30 ppm in any year 2000–2003 if credits are generated. The intent of the second and third conditions for determining the refinery/importer standards, also known as ''anti-backsliding'' conditions, was to prevent refineries that have relatively ''clean'' (i.e., low sulfur) baselines from becoming dirtier (i.e., backsliding to 150 ppm) and producing higher sulfur gasoline during the interim years of the program.

After the Tier 2 rule was promulgated, one refiner submitted comments opposing the anti-backsliding concept. This refiner argued that the anti-backsliding provision potentially eliminates the intended flexibility of the GPA program. Furthermore, this refiner believed that the provision creates an unfair, anti-competitive market situation among refiners competing in the same area (IVA–01). While some gasoline that is sold in the GPA may have an annual average standard of 150 ppm sulfur, other gasoline that is produced at refineries with clean baselines is subject to a more stringent standard. Refiners that currently have access to and rely on sweet (relatively low sulfur) crude slates are especially concerned. These refiners may not be able to comply with the program's standards if they lose their access to these sweet crude slates due to economics (e.g., a given refiner loses its sweet crude contract to a higher bidder) or lack of availability (there is some evidence that suggests that crude quality, especially in PADD IV, is declining and becoming more sour [6]). An unintended consequence of the anti-backsliding provision is that if such refineries should lose their current sweet crude slate, they would have to install desulfurization equipment in order to comply with the GPA standards. Thus, the GPA program would have little benefit for such refiners.

We have reassessed the concerns raised and find that they have merit on both technical and equity grounds. There is no technical reason why gasoline sulfur levels would automatically increase at refineries with cleaner baselines if we eliminated the anti-backsliding provision. As noted by commenters, however, there are situations where changed circumstances mean the anti-backsliding provision would have the unintended consequence of depriving a GPA refinery of any benefit from the GPA provision. Therefore, we believe it is appropriate to eliminate the anti-backsliding provisions from the GPA program. As a result, all gasoline that is designated as GPA gasoline must meet a refinery average standard for GPA gasoline equal to 150 ppm sulfur from 2004 through 2006 regardless of the refiner's 1997–1998 baseline or whether such refiner generates credits during the 2000–2003 time frame by producing gasoline with sulfur levels below 150 ppm. Because no gasoline designated as GPA gasoline to be sold in 2004 has been produced, the GPA standard finalized by today's rule supercedes any approvals of GPA standards issued under the prior provisions at § 80.216(a). Therefore, for any refiner or importer who has received a letter from EPA approving a GPA standard below 150 ppm, that refiner's or importer's standard for GPA gasoline is changed to 150 ppm by today's rule.

Even though we have revised the GPA program to set a refinery or importer annual average sulfur standard of 150 ppm for gasoline sold in the GPA, the overall emission benefits of the early years of the Tier 2 rule are not reduced over those described in the final rule. The air quality analysis of the Tier 2 rule was based on the premise that all gasoline produced or used in the GPA would be at a sulfur level of 150 ppm. We believe that setting a flat standard of 150 ppm for GPA gasoline as described above will still allow the objectives of the GPA program to be achieved. In addition, we expect little or no increase in the gasoline sulfur levels as a result of today's action and thus forecast the same air quality benefits.

B. Credit Generation Beginning in 2004

The Tier 2 rule provides that a refiner for any refineries and importers may generate credits in 2004 and beyond if the annual average sulfur level of the gasoline that they produce or import during a given compliance year is less than their applicable annual average gasoline sulfur standard in that year (See § 80.310). For GPA gasoline, credits are calculated as follows:

$$CR_a = V_a \times (S_{Std} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Std} = The least of 150 ppm, the refinery's or importer's 1997–98 baseline, or the refinery's lowest actual annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.[7]

[6] Swain, Edward J.; Processed-crude Quality in US Continues Downward Trend; Oil & Gas Journal; March 13, 2000.

[7] The definition of S_{Std} for GPA gasoline was subsequently changed to read ''the standard for GPA gasoline established for a refinery under § 80.216(a).'' 66 FR 19296 (April 13, 2001).

S_a = Actual annual average sulfur level of gasoline produced at a refinery or imported during the averaging period exclusive of any credits.

As discussed in section IV.A., above, we are eliminating the anti-backsliding provisions from the GPA program, therefore all gasoline that is designated as GPA gasoline will now have an annual average standard equal to 150 ppm sulfur. To prevent refineries that have existing low gasoline sulfur baselines from generating windfall credits (now that their GPA standard will be 150 ppm), we are also modifying the credit generation rules (beginning in 2004) for GPA gasoline. We believe that the amended regulations will allow for the generation of credits during the 2004–06 period comparable to the number of credits that could be generated under the Tier 2 rule, even though the standard for all GPA gasoline will be 150 ppm sulfur. For example, through this amendment, a refinery with a 50 ppm sulfur baseline will have a revised standard of 150 ppm for its GPA gasoline, as opposed to 80 ppm (i.e., 50 ppm baseline + 30 ppm) under the Tier 2 rule.[8] If today's rule eliminated the anti-backsliding provisions but did not revise the credit generation provisions, then the S_{Std} would always be 150 ppm for purposes of credit generation. Consequently, the same refiner producing gasoline (assume 10,000 gallons for simplification) at 80 ppm (which is 30 ppm higher than its existing baseline) in 2004 for sale in the GPA would generate 700,000 ppm-gal credits (10,000 gallons * (150 − 80 ppm sulfur)) without taking any steps to produce lower sulfur gasoline. Therefore, for purposes of credit generation for GPA refineries, we are preserving the calculus used for credit generation purposes in 2004 and beyond (even though refineries are now subject to a 150 ppm standard) by replacing ''S_{Std} with ''S_{Credit}'' , as discussed below.

Under today's final rule, credits for GPA gasoline are calculated as follows from 2004 through 2006[9]:

$$CR_a = V_a \times (S_{Credit} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Credit} = The least of 150 ppm or the refinery's or importer's 1997–98 baseline or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

S_a = Actual annual average sulfur level of gasoline produced at a refinery or imported during the averaging period exclusive of any credits.

From 2004 through 2006, all GPA gasoline will have a standard of 150 ppm sulfur. For credit generation purposes, refineries with existing baselines cleaner than 150 ppm will generate credits relative to their baseline while refineries with existing baselines dirtier than 150 ppm will generate credits relative to 150 ppm. Similar to how credits are generated in 2000 through 2003, credits for GPA gasoline produced in 2004 through 2006 may only be generated if the annual average sulfur level for the gasoline produced during the averaging period is less than 0.9 of the refinery's sulfur level that is used for credit generation purposes (i.e., 90 percent of the sulfur baseline for refineries with baselines below the 150 ppm standard and 90 percent of 150 ppm (135 ppm) for refineries with baselines above the standard).

For example, a refinery with a baseline of 100 ppm sulfur that lowers its sulfur level to 75 ppm in 2004 would generate credits equal to V_a (volume of gasoline produced at the refinery)* ($S_{credit} - S_a$) where S_{credit} equals 100 ppm and S_a equals 75 ppm (100 − 75 ppm equals 25 ppm), thus ppm-gallon credits would equal V_a * 25 ppm. On the other hand, a refinery with a baseline of 200 ppm that lowers its sulfur level to 125 ppm in 2004 would also generate ppm-gallon credits equal to V_a * 25 ppm (150 − 125 ppm). The refiner in the first example generates credits from a 100 ppm starting point (despite the 150 ppm annual average standard applicable to all GPA gasoline) whereas the refiner in the second example generates credits from a 150 ppm starting point since its current baseline is not cleaner than the 150 ppm annual average standard applicable to all GPA gasoline.

Once a GPA refiner/importer begins complying under the national program in 2007, credits are generated relative to the 30 ppm refinery average standard.

In summary, the provisions of this section under today's final rule eliminate the anti-backsliding standards provision of the Tier 2 rule and set the standard for GPA gasoline uniformly at 150 ppm for the duration of the GPA program (in general, from 2004 through 2006). In addition, this rule modifies the credit generation requirements of the ABT program that begin in 2004 to prevent the potential for windfall credits. This modification will allow for the generation of credits during the 2004–06 period comparable to the number of credits that could be generated under the Tier 2 rule, even though the standard for GPA gasoline will be 150 ppm sulfur.

C. Compliance With the Corporate Pool Average Standard by GPA Gasoline Producers

The Tier 2 rule provides that a refiner or importer must meet the corporate pool average standards under § 80.195 if GPA-designated gasoline comprises less than 50 percent of the refiner's or importer's total gasoline production or volume of imported product during the annual averaging period. See § 80.216(f). The preamble to the Tier 2 rule indicates that we intended GPA gasoline refiners and importers that are subject to the corporate pool average standards to use the same compliance process as other refiners and importers subject to the corporate pool average standards in 2004–2005. See 65 FR 6763. Thus, refiners and importers of GPA gasoline that are subject to the corporate pool average standards must demonstrate compliance with both the corporate pool average standard and the applicable refinery or importer average standard in the same manner as other refiners and importers; i.e., GPA refiners and importers subject to the corporate pool average standards must comply with the corporate pool standard and their GPA refinery or importer average standard (and non-GPA refinery or importer standard) independently. See preamble section III.C. above. Under this approach, compliance with the refinery or importer annual average and corporate pool standards is based on the refinery's or importer's actual sulfur levels, and credits or allotments, as appropriate, may be applied to achieve the standard if the actual sulfur level does not meet the standard. We believe, however, that the current regulations at § 80.205(f), may be read to be inconsistent with this approach. This provision provides that, ''For GPA refiners subject to the corporate pool average that produce some GPA gasoline, the refinery average sulfur value for its GPA gasoline shall be the average sulfur value of the gasoline after applying credits.'' Because we believe this provision may be misleading and is unnecessary, today's rule deletes this paragraph.

[8] This assumes that no credits were generated from 2000–2003 by going 10 percent below 50 ppm which would decrease the standard even further.

[9] Except for gasoline and diesel producing refineries that choose the Gasoline/Diesel compliance date option under the low sulfur diesel fuel program (See § 80.540). Under this option, refineries that fully comply with the low sulfur diesel fuel requirements by 2006 may extend their GPA gasoline standards through 2008.

V. Small Refiners

A. Subsidiary Ownership

Under the Tier 2 rule, a small refiner is defined as any person who: (1) Produces gasoline 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, 1998, to January 1, 1999; and (3) had an average crude capacity less than or equal to 155,000 barrels per calendar day for 1998. See § 80.225(a)(1). Section 80.225(a)(2) provides that, for purposes of determining the number of employees and crude capacity, the refiner must include the employees and crude capacity of any subsidiary companies, any parent company and subsidiaries of the parent company, and any joint venture partners. The regulations, however, do not specify the level of ownership that is required before a subsidiary must be included.

We believe that a refining company that has assets against which capital may be raised, such as subsidiary companies in which it has a 50 percent or greater ownership interest, or whose parent company has such assets, is in a better position to finance and install desulfurization equipment to comply with the sulfur standards in 2004. As a result, today's rule specifies that a subsidiary must be included in the small refiner's employee and crude capacity calculations if the refiner or the parent company of the refiner has a 50 percent or greater ownership interest in the subsidiary. This action is consistent with the intent of the small refiner hardship provisions to provide flexibility for small business refiners that lack the resources available to larger companies to raise capital for investing in desulfurization equipment by allowing them additional time to comply with the sulfur standards. This interpretation is also consistent with the Small Business Administration's regulations regarding size eligibility and standards. See 13 CFR 121.103.

B. Adjustment of the Small Refiner Per-gallon Sulfur Standard

Since the final Tier 2 rule was issued, EPA has become aware of the possibility that some small refiners may face unusual circumstances that could impede their access to the special interim sulfur program developed for small refiners. We are aware of at least one small refiner that appears to face extreme difficulty in meeting the minimum requirements to participate in the interim program, specifically the per-gallon cap sulfur standard established under § 80.240. We did not intend for the partial sulfur reductions that the interim per-gallon standards require in our small refiner interim program to prevent such small refiners from benefitting from the program. To address this problem, we are adding a new provision that will, under limited circumstances, allow an approved small refiner to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Such a small refiner will still be required to meet its established refinery annual average sulfur standards under § 80.240.

Under today's new provision, a refiner with approved small refiner status may request that EPA adjust its established per-gallon cap standard. An application for such a waiver must demonstrate that complying with the established small refiner per-gallon standard would effectively require the refiner to comply with the general (non-small-refiner) sulfur standards in 2004, 2005, and 2006 instead of the less stringent interim standards in the small refiner program for 2004 through 2007. Depending on the facts provided by the refiner about the difficulty that the established cap causes, EPA may, in its discretion, adjust the applicable small refiner per-gallon cap and establish the duration of such an adjusted per-gallon cap. Under no circumstances will EPA approve an adjusted per-gallon cap above 450 ppm sulfur or an adjusted per-gallon cap that applies beyond December 31, 2007.

Any small refiner for which EPA adjusts its per-gallon cap standard must also obtain and use sulfur credits or allotments to offset the emission increase from any batch of gasoline that exceeds the established per-gallon sulfur standard. The number of credits or allotments required to be used for this offset is calculated from the difference between the adjusted per-gallon cap and the established cap under § 80.240. The purpose of this requirement is to ensure that the overall environmental benefit of the gasoline sulfur program is maintained. Since excursions of a refinery's gasoline sulfur levels increase emissions, we believe that it is warranted to require that any such excess emissions be offset by lower emissions at this or another refinery. In addition to offsetting the increase in emissions, the requirement to use credits/allotments will also provide an incentive for refiners using this provision to minimize the frequency and degree that their gasoline exceeds their established per-gallon cap standard.

Today's new provision requires the refiner to use sulfur credits or allotments in numbers equal to the degree that any batches of gasoline exceed the established per-gallon standard over the course of each year in which the adjusted cap standard is in effect. Such credits or allotments must be separate from and in addition to any credits or allotments used by the refiner to comply with its annual average standard. The refiner must obtain and use the required total number of credits or allotments for the year by the time it submits its annual sulfur batch report. An adjustment to a small refiner's established per-gallon cap or the use of credits or allotments to offset the adjustment will not affect compliance with the annual average standard, which will continue to be based on the actual sulfur levels of each of that averaging period's gasoline batches and any credits or allotments applied against the annual average standard.

Under today's new provision, a small refiner that has an adjusted per-gallon cap will be liable for violations of the regulation if it either produces a batch of gasoline that exceeds the adjusted cap or it fails to apply the required number of credits or allotments to offset the cap adjustment. In the refiner's annual batch report to EPA, it must demonstrate that the required number of credits or allotments has been used to offset the per-gallon cap adjustment. A failure to use the required number of credits or allotments will constitute a violation, and each subsequent day that the required number of credits or allotments is not used constitutes a separate day of violation.

Because small refiners constitute a relatively small fraction of national gasoline production, and because the required credits or allotments will offset an adjustment of the per-gallon standard, we believe any adverse environmental consequences of this provision will be very small.

VI. Allotments and Credits

A. Generation of Credits in 2000

In designing the ABT provisions for the gasoline sulfur program, we intended to permit refiners to earn sulfur credits for gasoline produced during the year 2000. The regulations governing the creation of credits require all gasoline produced during the averaging period, defined as January 1 through December 31, to be included in the credit calculation. Because the rule was issued at the beginning of 2000, refiners that were not in immediate compliance with its sampling, testing, and documentation requirements were

unable to generate year 2000 credits. Today's amendment permits refiners to generate year 2000 credits using an averaging period less than the full calendar year, beginning with the first full month for which all required data is available.

B. Generation of Allotments in 2003

Section 80.285(a) provides that early credits in 2000–2003 may only be generated by refiners that produce gasoline from crude oil. EPA intended this limitation also to apply to the generation of early allotments, since the same rationale for including this limitation for early credits applies to early allotments (i.e., refiners that do not produce gasoline from crude oil do not have the same need for the allotment program because they will not have to make the same level of investment in desulfurization technology as refiners that process crude oil). See 65 FR 6762 for further discussion of the rationale for this limitation. However, language to implement this limitation for early allotment generation was inadvertently omitted in the final rule. As a result, today's rule corrects this oversight by including language in § 80.275(a)(1) which limits early allotment generation in 2003 to those refiners that produce gasoline from crude oil.

C. Oxygenate Blenders

Under the Tier 2 rule, oxygenate blenders are subject to the requirements and prohibitions applicable to downstream parties and the prohibition specified in § 80.385(e), but they are not subject to the provisions for refiners, including the refinery and corporate pool average standards in § 80.195. See § 80.212. Because oxygenate blenders are not subject to the refinery average standards, the regulations provide that oxygenate blenders may not generate credits beginning in 2004, since these credits are generated based on reductions from the refinery average standard. See § 80.285(b)(3). The same rationale applies to the generation of allotments in 2004–2005, since allotments are generated based on reductions from the corporate pool average standards. See § 80.275(b). However, language to implement this limitation regarding allotments was inadvertently omitted in the final rule. Today's rule corrects this oversight by adding § 80.275(b)(4) which provides that oxygenate blenders may not generate allotments in 2004–2005. See 65 FR 6761, 6800, for further discussion of the treatment of oxygenate blenders under the sulfur rule.

D. Conversion of Allotments to Credits

Section 80.275(c) of the Tier 2 rule states that allotments generated in 2003 or 2004 which are carried over to 2005 and used to meet the corporate pool standard in 2005 are discounted by 50 percent. Such allotments that have been carried over may also be converted into credits for compliance with the refinery average standard in 2005 and beyond. As a result, where allotments generated in 2003 or 2004 are carried over to 2005 and then converted into credits, such credits would retain only 50 percent of the value of the original allotments generated in 2003 or 2004. However, the rule also allows allotments to be converted into credits before being carried over to 2005. Such credits would not be discounted when they are carried over, and, therefore, would retain 100 percent of the value of the original allotments. Further, an allotment that is converted into a credit before being carried over to 2005 may be reconverted into an allotment for use in achieving compliance with the corporate pool average in 2005, but the allotment will be discounted 50 percent (i.e., bringing the value of the carried-over allotment back to what it would have been if it had never been converted to a credit). See 65 FR at 6765. Language to implement these conversion requirements was inadvertently omitted in the final rule. As a result, today's final rule adds § 80.275(e)(3) to address these requirements.

E. Deletion of the Discount Factor for Type A Allotments

The preamble to the Tier 2 rule states that early allotments generated in 2003 may be discounted depending on the refiner's actual sulfur level. If a refiner fully demonstrates compliance by producing gasoline with an actual annual average sulfur level of zero to 30 ppm, the allotments retain their full value. For actual annual average sulfur levels of 31–60 ppm, which are indicative of a partial demonstration of compliance with the ultimate low sulfur standard, the allotments are discounted 20 percent. See 65 FR 6759. The current regulations at § 80.275(a)(2)(i) and (a)(2)(ii), however, include a discount factor (0.8) for early allotments generated based on annual average sulfur levels of zero to 30 ppm. This was an error in the final rule. Today's rule corrects this oversight by eliminating the discount factor for such allotments. Allotments generated based on actual annual sulfur levels of 31–60 ppm will continue to be discounted by 20 percent (thus a discount factor of 0.8).

F. Standard Applicable Under § 80.310

Section 80.310(a) provides that a refiner, for any refinery, or importer may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than the applicable refinery or importer annual average sulfur standard for that refinery or importer in that year. However, the 30 ppm refinery or importer annual average standard does not become effective until 2005. See § 80.195(a). As indicated in the equation in § 80.310(b), EPA intended credits beginning in 2004 to be generated based on reductions from the 30 ppm annual average standard (or small refiner or GPA standard, as applicable). See also 65 FR 6763. As a result, today's rule revises § 80.310(a) to clarify that, for refiners and importers that are not subject to the small refiner or GPA standards, the refinery or importer annual average 30 ppm sulfur standard applicable to the refinery or importer beginning in 2005 applies for purposes of credit generation in 2004 and beyond.

VII. Downstream Standards and Compliance

A. Test Requirements for S–RGAS and Non–S–RGAS Combined to Produce Mid-Grade Gasoline

Section 80.210(d)(3) provides that gasoline comprised in whole or in part of small refiner gasoline (S–RGAS)[10] may qualify for the S–RGAS downstream standards provided that: (1) The gasoline is sampled and tested at the location after the most recent receipt of gasoline into the tank; and (2) the test result establishes that the sulfur content of the gasoline is over the cap standard. It is common in the gasoline distribution system for a terminal to supply transport trucks with midgrade gasoline by blending regular grade gasoline from one tank with premium grade gasoline from another tank. This mixing occurs as the truck is receiving gasoline from the different tanks. We believe the requirements for sampling and testing S–RGAS under the sulfur rule may have the effect of constricting the use of this common blending procedure. For example, if premium grade S–RGAS is blended with regular grade non-S–RGAS, under the current regulations, sampling and testing would

[10] The sulfur regulations define S–RGAS as ''gasoline that is subject to the standards under § 80.240 or § 80.270, including Certified Sulfur–FRGAS as defined in § 80.410, except that no batch of gasoline may be classified as S–RGAS if the actual sulfur content is less than the applicable per-gallon refinery cap standard specified in § 80.195.'' § 80.210(a).

be required before the resulting midgrade gasoline could be designated as S–RGAS on PTDs.

It was not the Agency's intention to constrict the use of this common blending procedure to create midgrade gasoline by imposing a possibly prohibitive new testing requirement on such blending. Therefore, the Agency is adding § 80.210(e)(5) to clarify that in instances where S–RGAS is combined with non-S–RGAS in truck compartments for the sole purpose of producing midgrade gasoline, the resulting gasoline may be classified on product transfer documents as S–RGAS even though no S–RGAS sampling and testing was conducted after the midgrade mixture was created. However, if the combining of the two products was not for the purpose of producing midgrade gasoline, this testing exemption would not apply.

B. Identifying S–RGAS Prior to Full Receipt of Gasoline

As indicated in Section A, above, for gasoline to qualify as S–RGAS, a terminal must sample and test the gasoline subsequent to the most recent receipt of gasoline into the terminal's storage tank. See § 80.210(d)(3). The terminal is not required to perform the testing until the entire load of new gasoline is received into the storage tank. However, it is a common industry practice for terminals to provide gasoline to a truck at the terminal's truck rack at the same time the terminal is receiving gasoline into the same storage tank that is supplying the truck. In some cases, the gasoline already in the terminal's storage tank is classified as S–RGAS when the new delivery of gasoline is received into the tank, while the new delivery of gasoline is not classified as S–RGAS. In other cases, the gasoline in the storage tank is not classified as S–RGAS, while the new delivery of gasoline is classified as S–RGAS. Until all of the new load of gasoline has been received into the storage tank, the current rule requires that the truck carrier be given a product transfer document (PTD) with the designation of the gasoline already in the storage tank, regardless of the status of the gasoline from the new delivery.

There is concern about this classification procedure because in many situations gasoline is bottom-loaded into the terminal storage tank while the truck rack is also being supplied from the bottom of the storage tank. Where S–RGAS is loaded into the bottom of a terminal storage tank containing non-S–RGAS, and the truck is also being loaded from the tank bottom, the truck may be receiving a load that properly meets the standards for S–RGAS, but the PTD for the gasoline would indicate that it is non-S–RGAS. Because of the non-S–RGAS designation, the higher small refiner standard would not apply to this gasoline, and, as a result, the gasoline may be found in violation if tested by the Agency. To remedy this situation, today's rule adds § 80.210(e)(6) to permit a terminal to issue to the trucker a PTD which states that the product is S–RGAS before the storage tank fully receives the load of S–RGAS product. This provision applies only in situations where S–RGAS is loaded into a terminal storage tank simultaneously supplying gasoline to the truck, and only until full receipt of the load of S–RGAS into the storage tank. At that point, the regular testing requirements would apply.

C. S–RGAS Product Transfer Documentation Requirements for Transfers of Custody

The Tier 2 rule requires that on each occasion when downstream parties transfer title or custody of gasoline that is classified as S–RGAS, the transferor must provide the transferee with PTDs identifying the S–RGAS status and standard applicable to such gasoline. See § 80.210(e)(2). Whether the gasoline is classified as S–RGAS on the PTDs depends upon 1) the gasoline being comprised in whole or in part of S–RGAS, 2) the receipt of a PTD stating that the product is S–RGAS, and 3) a test result confirming that the sulfur content exceeds the regulatory threshold under § 80.210(d)(3). The intent of these PTD identification requirements is to provide the transferee with accurate S–RGAS information about the gasoline received. Where a downstream party transferring custody of gasoline provides accurate information as to S–RGAS status and sulfur standard, as applicable, to its transferee on its Bill of Lading (BOL), the Agency believes that the goal of transferring accurate S–RGAS information is effectively satisfied. Therefore, in situations in which both a custody PTD on a BOL and a separate title PTD are generated by a downstream party for the same gasoline, the requirement of S–RGAS status and standard transmission is satisfied if both the custody transfer PTD and the title transfer PTD accurately provide the required information, or the custody transfer PTD provides the required information and the title transfer PTD indicates that the required information is contained in the custody PTD. Today's rule adds § 80.210(e)(7) to clarify these PTD requirements for S–RGAS.

VIII. Compliance Requirements and Enforcement

A. Liability for Geographic Phase-In Area (GPA) Gasoline

Sections 80.395(a)(5) and (a)(6) provide for liability for violations of the GPA use prohibitions at § 80.219(c). The language currently in these provisions imposes presumptive liability on those parties who sold or transferred the gasoline found to be in violation, as well as on those parties who caused another party to violate the GPA requirements. However, these provisions do not include presumptive liability for those parties actually operating the facilities where the violations occurred—the very parties with the most obvious and logical ties to the violations. The language in these provisions was meant to replicate the liability language for similar violations in EPA regulations, such as the Tier 2 rule's cap standard violations in § 80.395(a)(3) and (a)(4), and the reformulated gasoline (RFG) program's violations in § 80.79(a)(1) and (a)(3). These other liability sections impose presumptive liability not only on the parties who sold or transferred the gasoline in violation, but also on those parties at whose facilities the violation occurred. Today's rule revises §§ 80.395(a)(5) and (a)(6) to be consistent with the more logical liability scheme and violation provisions already incorporated into other EPA fuel programs.

B. Recordkeeping for Allotments

Section 80.365 of the Tier 2 rule contains requirements for retaining records which demonstrate compliance with the sulfur standards and requirements. This section is intended to cover records pertaining to the generation, use, and transfer of credits and allotments. See 65 FR 6810. Section 80.365(d)(2) contains requirements regarding the length of time records pertaining to early credits must be kept. However, this provision incorrectly does not include similar requirements for early allotments. This was an oversight in the final rule. Today's rule corrects this oversight by revising § 80.365(d)(2) to provide that the records required to be kept for early credits must also be kept for early allotments.

C. Attest Engagement Requirements

Under § 80.415(a)(3) of the Tier 2 rule, if a refinery's or importer's annual average sulfur content for any year in which early credits were generated was less than the refinery's or importer's baseline level, the attest engagement for that refinery or importer must include

as a finding the lowest annual sulfur level as the new baseline value. For GPA gasoline 30 ppm must be added to this new baseline value to obtain the GPA standard, not to exceed 150 ppm.

The attest provisions of § 80.415(a)(3) were intended to address the baseline adjustments required under §§ 80.216(a)(2) and 80.240(d) for GPA and small refiners.[11] However, as currently written, § 80.415(a)(3) suggests that *any* refiner or importer who generates early credits in 2000 through 2003 must adjust its baseline if the refinery's or importer's annual average sulfur content in any year in which early credits were generated was less than the refinery's or importer's baseline. This would mean that early credits generated in a subsequent year would be based on reductions from an adjusted baseline level rather than the refinery's actual baseline level. However, the regulations do not require such an adjustment for non-GPA or non-small refiners. For *any* annual averaging period from 2000 through 2003, early credits and allotments are generated based on reductions from the refinery's 1997–1998 sulfur baseline. *See* § 80.305. If, for example, a refinery generates credits in 2002 by producing gasoline that is 10 percent lower in sulfur content than its 1997–1998 baseline, the refinery does not have to produce even cleaner gasoline in 2003 to generate credits. Credit generation in 2003 would also be based on reductions from the refinery's 1997–1998 sulfur baseline.

As a result, today's rule revises the attest provisions to clarify that the requirements of § 80.415(a)(3) only apply to attest reports for small refiners that are subject to the baseline adjustment requirements under § 80.240(d), and GPA refiners that are subject to the adjustment provisions under § 80.285(b)(1)(ii) for purposes of credit generation beginning in 2004. Today's rule also clarifies that the attest requirements for small refiners in § 80.415(a)(4) apply to attest reports in 2004 through 2007. In addition, § 80.415(a) has been renumbered to provide better organization of these provisions.

Today's rule also adds § 80.415(b)(6) to require the attest engagement to agree with the information in the refinery's or importer's batch reports filed with EPA under the RFG/conventional gasoline regulations, and the refinery's or importer's laboratory test results, with the information contained in the annual sulfur report required under § 80.370. This requirement is necessary to verify the information submitted in the annual report required under § 80.370. Omission of this requirement was an oversight in the final rule.

IX. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency is required to determine whether this regulatory action would be ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this final rule is not a ''significant regulatory action.''

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's direct final rule on small entities, small entity is defined as: (1) A small business refiner that had no more than 1500 employees corporate-wide, based on the average number of employees for all pay periods from January 1, 1998 to January 1, 1999; and a corporate crude capacity less than or equal to 155,000 barrels per calendar day for 1999[12]; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's direct final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This direct final rule will not have any adverse economic impact on small entities. Today's rule corrects, amends, and revises certain provisions of the Tier 2 rule (65 FR 6698, February 10, 2000), regulated entities will find it easier to comply with the requirements of the Tier 2 rule. More specifically, today's action corrects typographical errors and makes other minor revisions to clarify the regulations governing compliance with the Tier 2 rule. Second, it modifies the effective date of the regulatory butane test method for determining the sulfur content of butane, a gasoline blendstock. Third, today's rule modifies the GPA program by replacing the variable standard for GPA gasoline with a flat average standard of 150 ppm sulfur. Fourth, it allows an approved small refiner, under limited circumstances, to seek a temporary adjustment to its interim small refiner per-gallon cap standard. Finally, it amends certain provisions of the small refiner and ABT programs as well as compliance and enforcement provisions to assist regulated entities with program implementation and compliance.

C. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been

[11] Section 80.240(d) provides that, for any small refiner who generates early credits or allotments, the applicable small refinery baseline for purposes of establishing the small refinery's standard is the lowest annual average sulfur level for any year in which the refinery generated early credits or allotments. Section 80.216(a)(2) provides that any GPA refiner whose actual annual average sulfur level decreases to a level lower than the refinery's GPA standard during the period 2000 through 2003, the applicable GPA standard will be the lowest average sulfur level for any year in which the refinery generated early credits or allotments, plus 30 ppm, not to exceed 150.00 ppm. As discussed above in Section IV.A., today's rule deletes the provisions of § 80.216(a)(2).

[12] This definition of a small business refiner was established under the Tier 2 Rule. See § 80.225.

prepared by EPA (ICR No. 2073.01) and a copy may be obtained from Sandy Farmer, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by calling (202) 260–2740. The information requirements are not effective until OMB approves them.

Certain small refiners may provide this requested information in order for EPA to consider granting specific relief relating to the gasoline sulfur requirements. This relief would be in the form of an adjustment to one of the gasoline sulfur standards that apply to small refiners, the per-gallon cap sulfur standard. The information will allow EPA to assess the need for such relief and to grant the appropriate relief based on the small refiner's situation. This information will be provided voluntarily by letter and will be treated by EPA as Confidential Business Information.

EPA estimates that between one and 5 small refiners may request an adjustment in their per-gallon cap sulfur standards, and that a one-time effort of about 2 hours will be required to prepare the application letter. We estimate the total industry-wide burden to be less than $1000. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''federal mandates'' that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of correcting, amending, and revising certain provisions of the Tier 2 rule. Therefore, the requirements of the UMRA do not apply to this action.

2. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. Today's rule does not uniquely affect the communities of American Indian tribal governments since the motor vehicle fuel and other related requirements for private businesses in today's rule will have national applicability. Furthermore, today's rule does not impose any direct compliance costs on these communities and no circumstances specific to such communities exist that will cause an impact on these communities beyond those discussed in the other sections of today's document. The effect of today's rule is no more significant than the Tier 2 rule for tribes under the original provisions of the GPA program; under today's action, gasoline sold in certain tribal lands will be subject to a flat average standard of 150 ppm sulfur. Thus, Executive Order 13175 does not apply to this rule.

3. Executive Order 13132 (Federalism)

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under Section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or we consults with state and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts state law, unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt state or local law, even if those rules do not have

federalism implications (i.e., the rules will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected state and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate state and local officials regarding the conflict between state law and federally protected interests within the Agency's area of regulatory responsibility.

This rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule clarifies and corrects certain provisions of an earlier rule that adopted national standards to control gasoline sulfur. The requirements of the rule will be enforced by the federal government at the national level. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13211: Energy Effects

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule references technical standards adopted by us through previous rulemakings. No new technical standards are established in today's rule. The standards referenced in today's rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's rule are all voluntary consensus standards.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that 1) is determined to be ''economically significant'' as defined under Executive Order 12866, and 2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Executive Order directs us to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to Congress and the comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective September 10, 2002.

X. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls set in today's final rule comes from section 211(c) of the CAA (42 U.S.C. 7545(c)), which allows us to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Additional support for the procedural and enforcement-related aspects of the fuel controls in today's final rule, including the record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 23, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

2. In § 80.46:

a. Paragraph (a)(2) is revised as set forth below; and

b. Paragraph (h) is amended by adding after the phrase ''ASTM standard methods'' the phrase ''D 3246–96, ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry'.''

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) * * *

(2) Beginning January 1, 2004, the sulfur content of butane must be determined by the use of ASTM standard method D 3246–96, entitled ''Standard Test Method for Sulfur in Petroleum Gas by Oxidative Microcoulometry.''

* * * * *

3. Section 80.195 is amended by revising paragraphs (b)(4) and (c)(4), and adding paragraphs (c)(5)(iii) and (c)(6) to read as follows:

§ 80.195 What are the gasoline sulfur standards for refiners and importers?

* * * * *

(b) * * *

(4) In 2005 only, the refinery or importer annual average sulfur standard may be met using allotments or credits as provided under § 80.275, or credits as provided under § 80.315. The same allotments used to demonstrate compliance with the corporate pool

average standard may be used by a refinery in the corporate pool toward a demonstration of compliance with the refinery average standard, or by an importer for demonstration of compliance with the importer average standard. Alternatively, some of the allotments may be used toward a demonstration of compliance with the refinery average standard by one refinery in the corporate pool and the remainder used by another refinery or refineries in the corporate pool.

(c) * * *

(4) The corporate pool average standards do not apply to approved small refiners subject to the gasoline sulfur standards under § 80.240.

(5) * * *

(iii) In the case of a refinery that is owned by a two or more parties that is not a joint venture under this paragraph (c)(5), the business entity consisting of the joint owners is the refiner of that refinery. One of the owners of such a refinery may include the refinery in its corporate pool for purposes of complying with the corporate pool average standards under this section, with the same requirements and limitations that apply under paragraph (c)(5)(ii) of this section.

(6)(i) A parent company is the refiner of any refinery facilities owned by the parent company's wholly-owned subsidiaries for purposes of compliance with the corporate pool average standards under this section.

(ii) A parent company must include in its corporate pool all of the gasoline produced at any refineries owned by the parent company and any refineries owned by the parent company's wholly-owned subsidiaries; or

(iii) A parent company may be deemed in compliance with the corporate pool average standards if the parent company includes in its corporate pool the gasoline produced by any refineries owned by the parent company, and each wholly-owned subsidiary of the parent company individually complies with the corporate pool average standards for the gasoline produced at the refineries owned by the wholly-owned subsidiary.

* * * * *

4. Section 80.205 is amended by revising the definition of S_a following the equation in paragraph (a) and removing paragraph (f) to read as follows:

§ 80.205 How is the annual refinery or importer average and corporate pool average sulfur level determined?

(a) * * *

Where:

S_a = The refinery or importer annual average sulfur level, or corporate pool average level, as applicable.

* * * * *

5. Section 80.210 is amended by adding paragraphs (e)(5), (e)(6) and (e)(7) to read as follows:

§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

* * * * *

(e) * * *

(5) Gasoline from a terminal tank containing S–RGAS that is combined with gasoline from a terminal tank containing non-S–RGAS for the purpose of blending mid-grade gasoline in a transport truck may be classified on product transfer documents as S–RGAS, provided that the S–RGAS was combined with non-S–RGAS for the sole purpose of producing midgrade gasoline.

(6) Where S–RGAS is being delivered into a terminal storage tank containing non-S–RGAS which is simultaneously supplying gasoline to a transport truck, the terminal may identify the gasoline as S–RGAS before the delivery into the terminal tank is complete without performing the tests required in paragraph (d)(3) of this section. Upon completion of the delivery of S–RGAS into the terminal tank, the terminal may classify the gasoline as S–RGAS only if it meets the criteria for S–RGAS following testing in accordance with the requirements of paragraph (d)(3) of this section.

(7) The information relating to S–RGAS required to be included in product transfer documentation under this paragraph (e) must be included in the product transfer documents which accompany the transfer of custody of the gasoline. Product transfer documents that transfer title of the gasoline may fulfill the requirements under this paragraph (e) by indicating that the required information relating to S–RGAS is contained in the product transfer documents which accompany the transfer of custody of the gasoline.

* * * * *

6. Section 80.216 is amended by revising paragraphs (a) and (f) to read as follows:

§ 80.216 What standards apply to gasoline produced or imported for use in the GPA?

(a) The refinery or importer annual average sulfur standard for gasoline produced or imported for use in the geographic phase-in area under § 80.215, and designated as GPA gasoline under § 80.219(a), shall be 150.00 ppm.

* * * * *

(f)(1) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of more than 50 percent of gasoline designated as GPA gasoline under § 80.219(a) shall not be required to meet the corporate pool average standards under § 80.195 for its gasoline production or imported gasoline during the applicable averaging period.

(2) A refiner or importer whose gasoline production or volume of imported gasoline in 2004 or 2005 is comprised of less than 50 percent of gasoline designated as GPA gasoline under § 80.219(a) must meet the corporate pool average standards under § 80.195 for all the refiner's gasoline production or the importer's volume of imported gasoline, including GPA gasoline, during the applicable averaging period.

* * * * *

7. Section 80.225 is amended by revising paragraph (a)(2) to read as follows:

§ 80.225 What is the definition of a small refiner?

(a) * * *

(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.

* * * * *

8. A new § 80.271 is added to subpart H under the heading ''Allotment Trading Program'' to read as follows:

§ 80.271 How can a small refiner obtain an adjustment of its 2004–2007 per-gallon cap standard?

(a) EPA may in its discretion adjust the small refiner per-gallon cap sulfur standard established for a refinery under § 80.240(a) (the established small refiner per-gallon standard) if the refiner demonstrates that the burden of complying with the established small refiner per-gallon standard would effectively prevent the refiner from participating in the small refiner relief provided in § 80.240. No refiner will be eligible for an adjustment of its established per-gallon standard above 450 ppm. The refinery annual average sulfur standards in § 80.240(a) are not affected by this section.

(b) A refiner wishing to apply for such an adjustment of its established small refiner per-gallon sulfur standard under

§ 80.240(a) must send a letter to Gasoline Sulfur Program, U.S. EPA, Office of Transportation and Air Quality, 2000 Traverwood Dr., Ann Arbor, MI 48105 no later than January 1, 2003. Such application must include the following information:

(1) A detailed description of the nature of the difficulty that the per-gallon cap creates;

(2) The refiner's proposed adjusted per-gallon cap standard and the proposed duration for the adjustment, including an explanation of how a lower per-gallon cap standard or shorter duration would not address the hardship;

(3) The refiner's expected actual annual average sulfur level (i.e., prior to the use of any credits or allotments) for each year that the adjustment would be in effect;

(4) The refiner's estimate of the number of gallons of gasoline it produces that will exceed the established small refiner per-gallon standard under § 80.240(a) for each year that the adjusted per-gallon cap would apply; and

(5) The number of sulfur credits or allotments that the refiner estimates will be required under paragraph (d) of this section for each year that the adjusted per-gallon cap would apply and a plan for obtaining this number of credits or allotments.

(6) Other relevant information that EPA requests.

(c) EPA will evaluate each application for an adjusted per-gallon cap sulfur standard on a case-by-case basis. EPA may impose any reasonable conditions on adjustments granted under this section. EPA may in its discretion set forth the duration of the adjusted per-gallon cap sulfur standard but in no case shall it extend beyond December 31, 2007.

(d)(1) A small refiner with an adjusted per-gallon sulfur cap standard under paragraph (a) of this section must obtain and use sulfur credits or allotments to offset the amount that the adjusted standard exceeds the established small refiner per-gallon standard under § 80.240(a). The number of sulfur credits or allotments needed for each year that the adjusted per-gallon cap would apply is calculated on a per-batch basis according to paragraph (d)(2) of this section and summed over the averaging period.

(2) The formula for determining the number of sulfur credits or allotments that such a small refiner is required to use for any batch of gasoline exceeding the established small refiner per-gallon standard under § 80.240(a) is as follows:

$$CR_b = V_b \times (S_b - S_c)$$

Where:

CR_b = number of sulfur allotments or sulfur credits needed for the gasoline batch (ppm-gallons)

V_b = Volume of the gasoline batch (gallons)

S_b = Sulfur level of the gasoline batch (ppm)

S_c = Small refiner per-gallon cap standard established for that refinery under § 80.240(a), in ppm.

(3) Sulfur credits or allotments used when a small refiner exceeds an established per-gallon cap sulfur standard under § 80.240(a) must be separate from and in addition to credits or allotments used for any other purposes provided under § 80.275 or § 80.315.

(e) The approving official for an adjustment under this section is the Director of the Office of Transportation and Air Quality in the EPA Office of Air and Radiation.

9. Section 80.275 is amended by:

a. Revising paragraph (a)(1);

b. Revising the first equation and second equation in paragraph (a)(2)(i);

c. Revising the second equation in paragraph (a)(2)(ii);

d. Revising the equation in paragraph (a)(2)(v);

e. Adding paragraphs (b)(4), (e)(3), and (h); and

f. Redesignating paragraph (c)(2) as paragraph (c)(2)(i) and adding a new paragraph (c)(2)(ii).

The revisions and additions read as follows:

§ 80.275 How are allotments generated and used?

(a) * * *

(1) During 2003 only, any domestic or foreign refiner who produces gasoline from crude oil may have the option to generate credits in accordance with the provisions of § 80.305 or generate allotments and credits under paragraph (a)(2) of this section.

(2) * * *

(i) * * *

$$SA_{TypeB} = (30 - Sa) \times V$$

$$SA_{TypeA} = V \times 90$$

* * * * *

(ii) * * *

$$SA_{TypeA} = (S_{Base} - 30) \times V$$

* * * * *

(v) * * *

$$SA_{TypeA} = ((S_{Base} - S_a) \times V) \times 0.8$$

* * * * *

(b) * * *

(4) Oxygenate blenders may not generate allotments under this section.

* * * * *

(c) * * *

(2) * * *

(ii) Small refiners subject to the standards under § 80.240 and that have received an adjustment of their per-gallon cap sulfur standards pursuant to § 80.271(a) may also use sulfur allotments to meet the requirements of § 80.271(d)(1) for any refinery that has received such an adjustment.

* * * * *

(e) * * *

(3) Allotments generated in 2003 or 2004 which are carried over to 2005 are discounted by 50 percent. The discounted allotments may be used to demonstrate compliance with the corporate pool average standard in 2005, or they may be converted into credits for use in demonstrating compliance with the refinery average standard in 2005, or in a subsequent averaging period, in accordance with the provisions of this paragraph (e). Any allotments generated in 2003 or 2004 that are converted into credits before being carried over to 2005 are not discounted. Any allotments generated in 2003 or 2004 that are converted into credits before being carried over to 2005 may be reconverted into allotments for use in demonstrating compliance with the corporate pool average standard in 2005, but such reconverted allotments are discounted by 50 percent.

* * * * *

(h) Allotments and credits under this program are in units of ''ppm-gallons''.

* * * * *

10. Section 80.285 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 80.285 Who may generate credits under the ABT program?

* * * * *

(b) * * *

(1) * * *

(ii) Refiners and importers of gasoline designated as GPA gasoline under § 80.219, using the least of 150 ppm, or the refinery's or importer's 1997–1998 sulfur baseline calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments (for any party generating credits under both paragraphs (b)(1)(i) of this section and this paragraph (b)(1)(ii), such credits must be calculated separately); or

* * * * *

11. Section 80.305 is amended by adding a new paragraph (f) to read as follows:

§ 80.305 How are credits generated during the time period 2000 through 2003?

* * * * *

(f) For gasoline produced during the year 2000, the averaging period for

credits generated in accordance with paragraph (a) of this section may be less than the full calendar year. Such partial-year averaging period will begin with the first full month for which all applicable sampling, testing, and documentation requirements are met.

12. Section 80.310 is amended by:

a. Revising paragraph (a);

b. Revising the equation in paragraph (b);

c. Removing the definition of S_{std} and adding a definition of S_{Credit} in its place following the equation in paragraph (b); and

d. Adding paragraph (d).

The revisions and additions read as follows:

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner for any refinery, or an importer, may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than 30 ppm; or, for refiners that are subject to the small refiner standards in § 80.240, the small refiner annual average sulfur standard applicable to that refinery; or, for refiners and importers subject to the GPA standards in § 80.216, the least of 150.00 ppm, or the refinery's or importer's 1997–1998 sulfur level calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

(b) * * *

$$CR_a = V_a \times (S_{Credit} - S_a)$$

* * * * *

S_{Credit} = 30 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the least of 150.00 ppm, or the refinery's or importer's 1997–1998 sulfur level calculated under § 80.295, or the refinery's lowest annual average sulfur content for any year from 2000 through 2003 during which the refinery generated credits or allotments.

* * * * *

(d) Refiners and importers of GPA gasoline may generate credits under this section only if the annual average sulfur level for the gasoline produced or imported during the annual averaging period is less than 0.90 of the refinery's or importer's sulfur level as calculated under § 80.295.

13. Section 80.315 is amended by revising the introductory text of paragraphs (a) and (b)(1) to read as follows:

§ 80.315 How are credits used and what are the limitations on credit use?

(a) Credit use. Credits may be used to meet the applicable refinery or importer annual average sulfur standards under § 80.195, § 80.216, or § 80.240, or may be used to meet the offset requirement under § 80.271(d)(1) for any refinery with an adjustment of itsper-gallon cap standard pursuant to § 80.271(a), provided that:

* * * * *

(b) Credit transfers. (1) Credits obtained from other persons may be used to meet the annual average standards specified in § 80.195, § 80.216, or § 80.240, or may be used to meet the offset requirement under § 80.271(d)(1) for any refinery with an adjustment of itsper-gallon cap standard pursuant to § 80.271(a), if all the following conditions are met:

* * * * *

14. Section 80.365 is amended by revising paragraph (d)(2) to read as follows:

§ 80.365 What records must be kept?

* * * * *

(d) * * *

(2) Early credits and allotments. (i) Where the party generating the credits or allotments does not transfer the credits or allotments, records must be kept for 5 years from the date of creation, use, or termination, whichever is later.

(ii) Where early credits or allotments are transferred, records relating to such credits or allotments shall be kept by both parties for 5 years from the date the credits or allotments were transferred, used, or terminated, whichever is later.

* * * * *

15. Section 80.370 is amended by revising paragraph (a)(4) and adding new paragraphs (a)(7)(v), (c)(4) and (c)(5) to read as follows:

§ 80.370 What are the sulfur reporting requirements?

* * * * *

(a) * * *

(4) The annual average sulfur level of the gasoline produced or imported;

* * * * *

(7) * * *

(v) For any batch of small refiner gasoline produced by any refinery with an adjustment of its per-gallon cap standard under § 80.271(a), the number of sulfur credits or allotments required under paragraph (d)(1) of this section, the number of credits or allotments used, and the source(s) of these credits or allotments.

* * * * *

(c) * * *

(4) A parent company must identify in the corporate pool average reports required under paragraph (c)(1) of this section any refinery facilities owned by the parent company, any subsidiaries wholly-owned by the parent company, and any refinery facilities of the parent company's wholly-owned subsidiaries, except as provided in paragraph (c)(5) of this section.

(5) Where the wholly-owned subsidiaries of a parent company comply with the corporate pool average standards individually pursuant to § 80.195(c)(6)(ii):

(i) The corporate pool average reports required under paragraph (c)(1) of this section must be submitted by each wholly-owned subsidiary of the parent company;

(ii) Each wholly-owned subsidiary of the parent company must identify in the corporate pool average reports required under paragraph (c)(1) of this section the subsidiary's parent company and any refinery facilities of the subsidiary; and

(iii) The parent company must submit the corporate pool average reports required under paragraph (c)(1) of this section for any refinery facilities owned by the parent company which are not the refinery facilities of the parent company's wholly-owned subsidiaries.

* * * * *

16. Section 80.385 is amended by revising paragraph (b) and adding a new paragraph (g) to read as follows:

§ 80.385 What acts are prohibited under the gasoline sulfur program?

* * * * *

(b) Cap standard violation. Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standard under § 80.195, § 80.216, § 80.210, § 80.220, § 80.240, or does not comply with an adjusted cap standard approved for a small refiner under § 80.271.

* * * * *

(g) Failure to use sufficient sulfur credits or allotments to offset a per-gallon cap adjustment. For a small refiner that has an approved adjustment of its per-gallon cap sulfur standard for a refinery under § 80.271, to fail to obtain (or generate) and use the required number of sulfur credits or allotments to offset the revised per-gallon cap sulfur standard under § 80.217(d).

17. Section 80.395 is amended by revising paragraphs (a)(5), (a)(6), and (a)(12), and adding a new paragraph (a)(13) to read as follows:

§ 80.395 Who is liable for violations under the gasoline sulfur program?

(a) * * *

(5) GPA use violation. Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385(f) occurred, is deemed in violation of § 80.385(f).

(6) Causing a GPA use violation. Any refiner, importer, distributor, reseller, carrier, retailer, wholesale purchaser-consumer, or oxygenate blender who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that violates § 80.385(f), is deemed in violation of § 80.385(c).

* * * * *

(12) Joint venture and joint owner liability. Each partner to a joint venture, or each owner of a facility owned by two or more owners, is jointly and severally liable for any violation of this subpart that occurs at the joint venture facility or facility owned by the joint owners, or is committed by the joint venture operation or any of the joint owners of the facility.

(13) Failure to use credits violation. Any small refiner that has an approved adjustment of its per-gallon cap under § 80.271 and that does not obtain (or generate) and use the required number of sulfur credits or allotments under § 80.271(d) by the time it submits its annual report under § 80.370 is deemed in violation of § 80.385(g).

* * * * *

18. Section 80.405 is amended by adding a new paragraph (e) to read as follows:

§ 80.405 What penalties apply under this subpart?

* * * * *

(e) Any person liable under § 80.395(a)(13) for failing to obtain (or generate) and use the total required number of sulfur credits or allotments under § 80.271(d) for a calendar year is subject to a separate day of violation for each day until the required number of credits or allotments is used.

19. Section 80.410 is amended by revising paragraph (h)(7)(ii) to read as follows:

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having an individual small refiner sulfur baseline, foreign refineries granted temporary relief under § 80.270, or baselines for generating credits during 2000 through 2003?

* * * * *

(h) * * *

(7) * * *

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in §§ 80.125 through 80.130, § 80.415 and this paragraph (h); and

* * * * *

20. Section 80.415 is amended by;

a. Adding paragraphs (a)(2)(iii), (a)(2)(iv), and (b)(6);

b. Removing paragraphs (a)(4) and (a)(5); and

c. Revising paragraphs (a)(3) and (g)(4).

The additions and revisions read as follows:

§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?

* * * * *

(a) * * *

(2) * * *

(iii) If the annual average sulfur level for any year in which credits were generated for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section, for small refiners report as a finding the lowest annual sulfur level as the new baseline value for purposes of establishing the small refiner standards under § 80.240, and for GPA gasoline report as a finding the lowest annual sulfur level as the new sulfur level for purposes of credit generation under § 80.310, if lower than 150.00 ppm.

(iv) If the refinery being reviewed is a small refinery and the annual volume under paragraph (b)(2) of this section is greater than the baseline volume, calculate the applicable standard in accordance with § 80.240(c).

(3) Obtain a written representation from the company representative stating the sulfur value that the company used as its baseline and agree that number to paragraphs (a)(1) and (a)(2) of this section and to the reports to EPA.

(b) * * *

(6) Agree the information in the refinery's or importer's batch reports filed with EPA under §§ 80.75 and 80.105, and any laboratory test results, with the information contained in the annual sulfur report required under § 80.370.

* * * * *

(g) * * *

(4) Obtain the refiner's or importer's representation as to the portion of the deficit under paragraph (g)(3) of this section that was resolved with credits, or the portion that was resolved with allotments in 2004 or 2005 only (compliance deficits for GPA gasoline cannot be carried forward).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0036; FRL–6835–6]

RIN 2070–AB78

Vinclozolin; Tolerance Revocations and Notice of Channels of Trade Provision Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This final rule revises the tolerances listed in the regulatory text for the fungicide vinclozolin (40 CFR 180.380) by revoking the tolerances in or on strawberries, stone fruits, cucumbers, and bell peppers. The Environmental Protection Agency previously published a notice proposing to revoke these four tolerances, subject to public comment, in the **Federal Register** on July 10, 2001 (FRL–67797–7). The regulatory actions in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the Federal Food, Drug, and Cosmetic Act (FFDCA).

The Food and Drug Administration (FDA) in a related notice published else where in this issue of the **Federal Register** is announcing the availability of a guidance document presenting FDA's policy on its planned enforcement approach for foods containing vinclozolin residues. This guidance will assist firms in understanding the types of showing under 408(1)(5) of the FFDCA (hereinafter referred to as the channels of trade provision) that FDA may find satisfactory in accordance with its planned enforcement approach for such section. EPA and FDA are cooperating on this effort.

DATES: This final rule is effective June 12, 2002. Objections and requests for hearings, identified by docket ID number OPP–2002–0036, must be received by EPA on or before August 12, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please