

§ 80.260

40 CFR Ch. I (7-1-11 Edition)

(a) *Compliance commitment.* By no later than June 1, 2004, any refiner who is approved for small refinery standards must submit a preliminary report to EPA which outlines the refiner's timeline for compliance and a project plan which discusses permits, capital commitments and engineering plans for making the necessary modifications to produce gasoline that meets the 30 ppm refinery average and 80 ppm per-gallon cap sulfur standards under § 80.195 on or before January 1, 2008. Documents showing activities and progress in these areas should be provided, if available.

(b) *Demonstration of Progress.* (1)(i) By no later than June 1, 2005, the small refiner must submit a report to EPA that states in detail the progress toward compliance with the 30 ppm refinery average and 80 ppm cap sulfur standards to date based on their timeline and project plan. The report must include:

(A) Copies of approved permits for construction of the equipment, or the permit application if approval is still pending;

(B) Copies of contracts for design and construction; and

(C) Any available evidence of having secured the necessary financing to complete the required construction;

(ii) If the refiner anticipates any difficulties in meeting its compliance commitments under this section, the refiner must submit a detailed report of all efforts made to date and the factors that may cause delay, including costs, specification of engineering or other design work needed and reasons for delay, specification of equipment needed and any reasons for delay, potential equipment suppliers and history of negotiations, and any other relevant information. If unavailability of equipment is a factor, the report must include a discussion of other options considered and the reasons these other options are not feasible.

(2) By no later than June 1, 2006, the small refiner must submit to EPA evidence that on-site construction has begun and that, absent unforeseen difficulties, the small refiner will be producing complying gasoline by January 1, 2008. If construction has not begun, the refiner must demonstrate that it

has made all reasonable efforts to begin construction, that substantial progress is being made to begin construction as soon as possible, and that construction can be completed in time to begin production of gasoline that complies with the standards of § 80.195 by January 1, 2008.

(c) *Additional information.* The Administrator may request any additional information necessary to determine a refiner's commitment and/or progress toward meeting the standards in § 80.195 by 2008.

(d) *Failure to comply with requirements.* Any small refiner who fails to submit the progress reports required under this section will not be eligible for a hardship extension under § 80.260.

§ 80.260 What are the procedures and requirements for obtaining a hardship extension?

(a) An approved small refiner who has filed the reports specified in § 80.255 may apply to EPA for a hardship extension of the small refiner standards for calendar years 2008 and 2009. The application must be submitted in writing no later than January 1, 2007, to U.S. EPA, Attn: Sulfur Program (6406J), 1200 Pennsylvania Ave., NW., Washington, DC 20460. For commercial (non-postal) delivery: U.S. EPA, Attn: Sulfur Program, 501 3rd Street NW, Washington, DC 20001.

(b) The application must specify the factors that demonstrate a significant economic hardship and must provide a detailed discussion regarding the inability of the refinery to produce gasoline meeting the requirements of § 80.195. Such an application must include, at a minimum, the following information:

(1) Documentation of efforts made to obtain necessary financing, including:

(i) Copies of loan applications for the necessary financing of the construction of appropriate sulfur reduction technology and other equipment procurements or improvements; and

(ii) If financing has been disapproved or is otherwise unsuccessful, documents supporting the basis for that disapproval and evidence of efforts to pursue other means of financing;

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(2) A detailed analysis of the reasons the refinery is unable to produce gasoline meeting the standards of § 80.195 in 2008, including costs, specification of equipment still needed, potential equipment suppliers, and efforts already completed to obtain the necessary equipment;

(3) If unavailability of equipment is part of the reason for the inability to comply, a discussion of other options considered, and the reasons these other options are not feasible;

(4) If relevant, a demonstration that a needed or lower cost technology is immediately unavailable, but will be available in the near future, and full information regarding when and from what sources it will be available;

(5) Schematic drawings of the refinery configuration as of January 1, 1999, and as of the date of the hardship extension application, and any planned future additions or changes;

(6) If relevant, a demonstration that a temporary unavailability exists of engineering or construction resources necessary for design or installation of the needed equipment;

(7) If sources of crude oil lower in sulfur than what the refiner is currently using are available, full information regarding the availability of these different crude sources, the sulfur content of those crude sources, the cost of the different crude sources over the past five years, and an estimate of gasoline sulfur levels achievable by the refinery if the lower sulfur crude sources were used;

(8) A discussion of any sulfur reductions that can be achieved from current levels;

(9) The date the refiner anticipates compliance with the standards in § 80.195 can be achieved at its refinery;

(10) An analysis of the economic impact of compliance on the refiner's business (including financial statements from the last 5 years, or for any time period up to 10 years, at EPA's request); and

(11) Any other information regarding other strategies considered, including strategies or components of strategies that do not involve installation of equipment, and why meeting the standards in § 80.195 beginning in 2008 is infeasible.

(c) The hardship extension application must contain a letter signed by the president or the chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

§ 80.265 How will the EPA approve or disapprove a hardship extension application?

(a) EPA will evaluate each application for hardship extension on a case-by-case basis. The factors considered for a hardship extension may include: The refiner's financial position and efforts to obtain capital funding; the refiner's efforts to procure necessary equipment, obtain design and engineering services and construction contractors; the availability of desulfurization equipment; and any other relevant factor. An extension will be granted for a refinery for the 2008 averaging period if the small refiner who owns the refinery adequately demonstrates that severe economic hardship would result if compliance with the standards in § 80.195 is required in 2008, or that compliance with the standard in 2008 is not feasible for reasons beyond the refiner's control, and that the refiner has made the best efforts possible to achieve compliance with the national standards by January 1, 2008. Upon reapplication by the refiner, if EPA determines that further relief is appropriate, EPA may grant a further extension through the 2009 averaging period. In no case will a further extension for the 2009 averaging period be granted unless the refiner demonstrates conclusively that it has financing in place and that it will be able to complete construction and meet the national gasoline sulfur standards no later than December 31, 2009.

(b) EPA may request more information, if necessary, for evaluation of the application. If requested information is not submitted within the time specified in EPA's request, or any extensions granted, the application may be denied.

(c) EPA will notify the refiner of approval or disapproval of hardship extension by letter.