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(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.

[67 FR 40182, June 12, 2002]

§ 80.275 How are allotments generated and used?

(a) *Generation of allotments and credits in 2003.* (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) If the average sulfur content of the gasoline produced at a refinery is less than the refinery's baseline as determined under § 80.295 and is 60 ppm or less, allotments and credits may be generated using the following procedures. This paragraph (a) does not apply to importers.

(i) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is greater than 120, the following procedures apply:

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

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

$$CR = (S_{Base} - 120) \times V$$

(ii) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is greater than 30 but less than or equal to 120, the following procedures apply:

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

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

(iii) If the average sulfur content of the gasoline produced at a refinery is less than or equal to 30, and the refinery's sulfur baseline is less than or equal to 30, the following procedures apply:

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

(iv) If the average sulfur content of the gasoline produced at a refinery is greater than 30, and the refinery's sulfur baseline is greater than 120, the following procedures apply:

$$SA_{TypeA} = ((120 - S_a) \times V) \times 0.8$$

$$CR = (S_{Base} - 120) \times V$$

(v) If the average sulfur content of the gasoline produced at a refinery is

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greater than 30, and the refinery's sulfur baseline is less than or equal to 120, the following procedures apply:

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

(vi) For purposes of the equations under paragraphs (a)(2)(i) through (v) of this section, the following definitions apply:

SA_{TypeB} = Type B sulfur allotments generated.

SA_{TypeA} = Type A sulfur allotments generated.

CR = Credits generated.

S_{Base} = Refinery's sulfur baseline value under § 80.295.

S_a = Average sulfur content of the gasoline produced at the refinery during 2003 (or for a foreign refinery, all gasoline produced during 2003 that was imported into the U.S.).

V = Volume of gasoline produced at the refinery during 2003 (or for a foreign refinery, all gasoline produced during 2003 that was imported into the U.S.).

(b) *Generation of allotments in 2004 and 2005.* During 2004 and 2005 only, refiners and importers that have corporate pool average sulfur levels below the corporate pool average standards under § 80.195 may generate sulfur allotments separately for each year using the following procedures.

(1) If the average sulfur content of the gasoline produced or imported is less than 30 the following procedures apply:

$$SA_{\text{TypeB}} = (30 - S_a) \times V_a$$

$$SA_{\text{TypeA}} = (S_{\text{PS}} - 30) \times V_a$$

(2) If the average sulfur content of the gasoline produced or imported is equal to or greater than 30 the following procedures apply:

$$SA_{\text{TypeA}} = (S_{\text{PS}} - S_a) \times V_a$$

(3) For purposes of the equations under paragraphs (b)(1) and (2) of this section, the following definitions apply:

SA_{TypeB} = Type B sulfur allotments generated.

SA_{TypeA} = Type A sulfur allotments generated.

S_a = Corporate pool average sulfur level for the year.

S_{PS} = Corporate pool average standard (120 in 2004; 90 in 2005).

V_a = Total volume of gasoline produced and/or imported during the year.

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

(c) *Use of sulfur allotments to meet standards.* (1) Refiners and importers may use Type A and Type B sulfur allotments to meet the corporate pool average standards under § 80.195, except that if allotments generated in 2003 or 2004 are used to meet the corporate pool standard in 2005 the allotments generated in 2003 or 2004 shall be reduced in value by 50%.

(2)(i) Small refiners subject to the standards under § 80.240, and refiners and importers of gasoline designated as GPA gasoline under § 80.219(a), may use sulfur allotments to meet their annual average refinery or importer standards.

(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.

(d) *Transfers of sulfur allotments.* Sulfur allotments generated under this section may be transferred, provided that:

(1) No allotment may be transferred more than twice: The first transfer by the refiner or importer who generated the allotment may only be made to a refiner or importer who intends to use the allotment; if the transferee cannot use the allotment, it may make the second, and final, transfer only to a refiner or importer who intends to use the allotment. In no case may an allotment be transferred more than twice before being used or terminated.

(2) The allotment transferor must apply any allotments necessary to meet the transferor's corporate pool average standard before transferring allotments to any other refiner or importer or before converting allotments into credits.

(3) The transferor must supply to the transferee records indicating the year of generation and type of the allotments, the identity of the refiner or importer who generated the allotments, and the identity of the transferring party, if it is not the same party that generated the allotments.

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(4) The transferor must inform the transferee whether any transferred allotments are Type A allotments or Type B allotments, as defined in paragraphs (a) and (b) of this section.

(5) In the case of allotments that have been calculated or created improperly, or are otherwise determined to be invalid, the following provisions apply:

(i) Invalid allotments cannot be used to achieve compliance with the transferee's corporate pool average standard or be converted to credits, regardless of the transferee's good faith belief that the allotments were valid.

(ii) The refiner or importer who used the allotments, and any transferor of the allotments, must adjust their allotment records and reports and sulfur calculations as necessary to reflect the proper allotments.

(iii) Any allotments remaining after correcting for the improperly created allotments must first be applied to correct the invalid transfers before the transferor may transfer any other allotments or before converting allotments into credits.

(e) *Conversion of allotments into credits.* A refiner or importer may convert allotments into credits using the following procedures:

(1) Type A allotments may be converted into credits with the same requirements and limitations on use that apply under § 80.315 to credits generated in 2000 through 2003.

(2) Type B allotments may be converted into credits with the same requirements and limitations on use that apply under § 80.315 to credits generated in 2004 and later, based on the year of creation of the allotment.

(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 allot-

ments 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.

(f) *Small refiners.* Small refiners subject to the standards under § 80.240 may not generate sulfur allotments under paragraph (b) of this section.

(g) *GPA gasoline.* GPA gasoline that is included in the refiner's or importer's corporate pool average under § 80.216(f)(2) must be included in the calculations under paragraph (b) of this section. No refiner or importer may generate allotments in 2004 or 2005 who is not required to meet the corporate pool average standards.

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

[65 FR 6823, Feb. 10, 2000, as amended at 67 FR 40183, June 12, 2002]

AVERAGING, BANKING AND TRADING (ABT) PROGRAM—GENERAL INFORMATION

§ 80.280 [Reserved]

§ 80.285 Who may generate credits under the ABT program?

(a) *Credit generation in 2000 through 2003.* (1) Credits may be generated in 2000 through 2003 under § 80.305 by refiners who produce gasoline from crude oil, and are:

(i) Refiners who establish a sulfur baseline under § 80.295 for a refinery;

(ii) Foreign refiners for refineries with an approved baseline under § 80.94, or refineries with baselines established in accordance with § 80.290(d); or

(iii) Small refiners for any refinery subject to the standards under § 80.240, using their small refiner baseline established under § 80.250 for that refinery.

(2) Importers and oxygenate blenders may not generate credits under § 80.305.

(b) *Credit generation beginning in 2004.* (1) Credits may be generated beginning in 2004 under § 80.310 by:

(i) Refiners for any refinery, and importers subject to the standards under § 80.195;