

maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* (1) This section will be enforced annually from 8:30 a.m. to 5:30 p.m. on the last weekend in September or the first weekend in October. The Commander, Fifth Coast Guard District will publish a Notice of Enforcement in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners every year announcing the dates and times this section is in effect.

(2) In 2006 this section will be enforced from 8:30 a.m. on September 30, 2006 to 5:30 p.m. on October 1, 2006.

Dated: September 8, 2006.

**Larry L. Hereth,**  
Rear Admiral, U.S. Coast Guard, Commander,  
Fifth Coast Guard District.

[FR Doc. 06-7943 Filed 9-19-06; 8:45 am]

BILLING CODE 4910-15-U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 80**

[EPA-HQ-OAR-2004-0508; FRL-8221-2]

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:** Final rule.

**SUMMARY:** This action amends the credit generation provisions of the Geographic Phase-in Area (GPA) gasoline sulfur program to yield the correct number of credits for refineries and importers that produce GPA gasoline and eliminate the generation of windfall credits by refineries or importers that have gasoline sulfur baselines below 150 ppm sulfur.

In June 2002, we published a Direct Final Rule (DFR) and concurrent Notice of Proposed Rulemaking (NPRM) to amend certain provisions of the gasoline sulfur program concerning Geographic Phase-in Area (GPA) gasoline. Specifically, we replaced the variable standard for GPA gasoline with a flat standard of 150 parts per million (ppm) sulfur for the duration of the GPA program. To prevent the generation of windfall credits by refineries or importers that had gasoline sulfur baselines below 150 ppm sulfur, we also amended the program's credit generation provisions. As stated in the preamble to the Direct Final Rule, we believed that the amendment would result in an equivalent number of credits generated during the amended GPA program as compared to the original program described under the Tier 2 final rule. Despite our intent for the revised calculations to yield the equivalent number of credits, the amended credit provisions were incorrect as pointed out by an adverse comment received on the DFR. Based on this adverse comment, we issued a partial withdrawal notice on August 26, 2002, to withdraw the amendments to the credit provisions and reinstate the provisions that were previously in effect. However, we also stated that we would address the adverse comments in a subsequent final action, this action, based on the concurrent NPRM.

**DATES:** This final rule is effective on January 1, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2004-0508. All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available

either electronically in <http://www.regulations.gov> or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566-1742. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at <http://www.epa.gov/epahome/dockets.htm> for current information on docket status, locations and telephone numbers.

**FOR FURTHER INFORMATION CONTACT:** Mary Manners, Compliance and Innovative Strategies Division, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214-4873, fax (734) 214-4053, e-mail [manners.mary@epa.gov](mailto:manners.mary@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**Does This Action Apply to Me?**

This action will affect you if you produce gasoline. The table below gives an example of entities that may have to comply with the regulations. However, since this is only an example, you should carefully examine these and other existing regulations in Title 40 Part 80 of the Code of Federal Regulations (CFR). If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes <sup>a</sup>	SIC codes <sup>b</sup>	Examples of potentially regulated entities
Industry .....	324110	2911	Petroleum refiners.

<sup>a</sup> North American Industry Classification System (NAICS).  
<sup>b</sup> Standard Industrial Classification (SIC) System.

**Outline of This Preamble**

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II. Background

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B. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the June 2002 Direct Final Rule

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- A. Executive Order 12866: Regulatory Planning and Review
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C. Regulatory Flexibility Act

D. Unfunded Mandates Reform Act

E. Executive Order 13132: Federalism

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G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

- H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer Advancement Act
- J. Congressional Review Act

## I. Electronic Availability

Today's action is available electronically on the date 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. These services are free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web site: <http://www.epa.gov/fedrgstr/EPA-AIR/> (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site: <http://www.epa.gov/otaq/> (look in What's New or under specific rulemaking topic).

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

## II. Background

Under a direct final rule (DFR) published in the **Federal Register** on June 12, 2002 (67 FR 40169), we eliminated the anti-backsliding provision for the annual average sulfur standard for Geographic Phase-in Area (GPA) gasoline. Specifically, we replaced the variable average standard for GPA gasoline<sup>1</sup> with a flat average standard of 150 ppm sulfur for 2004 through the duration of the GPA program.<sup>2</sup> To prevent the generation of windfall credits by refineries that had gasoline sulfur baselines below 150 ppm sulfur, we also amended the credit generation provisions for the duration of the GPA program (§ 80.310). As stated in the preamble to the direct final rule, we

<sup>1</sup> The anti-backsliding requirement was defined for the average standard for GPA gasoline as the least of (1) 150 ppm, (2), the refinery's or importer's 1997/1998 average gasoline sulfur level, calculated in accordance with section 80.295, plus 30 ppm, or (3) the lowest average sulfur level for any year in which the refinery generated allotments or credits under sections 80.275(a) or 80.305 plus 30 ppm, not to exceed 150 ppm.

<sup>2</sup> Under the Tier 2 final rule (65 FR 6698, February 10, 2000), the GPA program lasted from 2004 through 2006. However, the highway diesel final rule (66 FR 5002, January 18, 2001) allowed a two year extension of the GPA program in exchange for full compliance with the 15 ppm ultra-low sulfur diesel fuel standard by June 1, 2006.

believed that the amendment to § 80.310 would result in an equivalent number of credits generated during the amended GPA program as compared to the original program under the Tier 2 final rule (65 FR 6698, February 10, 2000), even though the average standard for GPA gasoline was changed to 150 ppm sulfur.

However, one commenter on the DFR indicated that the amendment to § 80.310 would change the manner in which a refinery or importer of GPA gasoline would generate gasoline sulfur credits beginning in 2004. Specifically, the commenter stated that the amendments to §§ 80.310(a) and 80.310(b) would cause the credit baselines for its refineries to be reduced from 150 ppm to lower sulfur levels. The commenter also indicated that the changes to § 80.310(d) would require a refinery to reduce sulfur levels by at least 10 percent from its baseline before credits could be generated. The commenter stated that it would be adversely impacted by these changes since the amended rule would require it to invest capital dollars earlier than it had currently planned at its refineries in order to generate credits. The commenter stated that the combined effect of these changes would be detrimental because the number of credits that it could generate would be significantly reduced. The commenter indicated that it would be negatively impacted by this credit generation limitation since its ability to defer capital expenditures would be limited.

Based on this adverse comment, we issued a partial withdrawal notice (67 FR 38338, August 26, 2002) to withdraw the amendments to § 80.310(a), (b), and (d). In the DFR, we stated that if we received adverse comment on one or more distinct amendments, paragraphs, or sections of the direct final rule by July 12, 2002, we would publish a timely withdrawal in the **Federal Register** indicating which provisions would become effective on September 10, 2002, and which provisions would be withdrawn due to adverse comment. During the 30-day comment period for the rule, we received the adverse comments discussed above on the amendments to § 80.310(a), (b), and (d). In the partial withdrawal notice, we withdrew those amendments and reinstated the provisions that were previously in effect. However, we also stated that we would address the adverse comments in a subsequent final action, today's action, based on the Notice of Proposed Rulemaking that was published concurrently with the DFR.

### A. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the Tier 2 Final Rule

Prior to the June 2002 DFR, a refinery or importer's average sulfur standard for GPA gasoline would have been, with the anti-backsliding provisions of the Tier 2 final rule, the least of 150 ppm, the refinery's 1997–98 sulfur baseline plus 30 ppm, or the level from which credits were generated plus 30 ppm. A refinery or importer with a sulfur baseline of 100 ppm, for example, would have had a GPA gasoline sulfur standard of 130 ppm for the duration of the GPA program (the refinery or importer's 1997–98 baseline plus 30 ppm), assuming that no credits were generated prior to 2004. In 2004 and beyond, that refinery or importer would have generated credits based on the following equation under § 80.310:

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

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 standard for GPA gasoline (least of 150 ppm, the refinery or importer's 1997–98 sulfur baseline plus 30 ppm, or the level from which credits were generated plus 30 ppm).

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

Using a volume of 100 gallons for simplified calculation purposes and assuming that the refinery or importer's actual annual gasoline sulfur level was held at its baseline level of 100 ppm, that refinery or importer would have generated 3000 ppm-gallon credits [100 gallons  $\times$  (130 ppm – 100 ppm)].

### B. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the June 2002 Direct Final Rule

As a result of the June 2002 DFR, a refinery or importer's average sulfur standard for GPA gasoline would have been a flat standard of 150 ppm. As mentioned above, the DFR also amended the credit generation provisions (§ 80.310) for the duration of the GPA program to prevent the generation of windfall credits. As a result of the DFR, that refinery or importer would have generated credits based on the following equation:

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

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.  
 $S_{Credit}$  = For GPA gasoline, the least of 150 ppm, or the refinery or importer's 1997–98 sulfur level, or the refinery or importer's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery or importer generated credits or allotments.  
 $S_a$  = Actual annual average sulfur level for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

Again using a volume of 100 gallons for simplified calculation purposes and assuming that the refinery or importer's actual annual gasoline sulfur level was held at its baseline level of 100 ppm, that refinery or importer would not generate any credits under the amended § 80.310 [100 gallons × (100 ppm – 100 ppm) = 0]. Furthermore, the amendment to § 80.310 specified that refiners and importers of GPA gasoline may generate credits beginning in 2004 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 or importer's 1997–98 baseline sulfur level. In this example, the refinery or importer would not be able to generate credits until it reduced its gasoline sulfur levels to 90 percent of its baseline, or 90 ppm [0.90 × 100].

### III. What Is EPA Finalizing Under This Action?

Today's final rule does not further amend the refinery/importer annual average standard for GPA gasoline. That is, the standard continues to be 150 ppm for the duration of the GPA program. However, today's final rule does amend the credit generation provisions of § 80.310 by adding 30 ppm to the  $S_{Credit}$  variable, as shown below. Today's final rule also amends §§ 80.285 and 80.415 to make them consistent with § 80.310. These amendments will yield the correct number of credits generated in that the number of credits generated will be equivalent to the number of credits generated under § 80.310 of the Tier 2 final rule. While these amendments apply to credits generated beginning in 2004, these amendments will not be effective until January 1, 2007 and will not be applied retroactively. Specifically, under today's final rule, a refinery or importer will generate credits based on the following equation:

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

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.  
 $S_{Credit}$  = For GPA gasoline, the least of 150 ppm, or the refinery's or importer's 1997–98 sulfur level plus 30 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30 ppm.  
 $S_a$  = Actual annual average sulfur level for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

Again using a volume of 100 gallons for simplified calculation purposes and assuming that the refinery or importer's actual annual gasoline sulfur level is held at its baseline level of 100 ppm, that refinery or importer will generate 3000 ppm-gallon credits under today's final rule [100 gallons × (130 ppm – 100 ppm) = 3000].

### IV. Statutory and Executive Order Reviews

#### A. Executive Order 12866: Regulatory Planning and Review

This action is not a “significant regulatory action” under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

#### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action specifically amends the regulations pertaining to the calculation of GPA gasoline sulfur credits to yield the correct number of credits for refineries and importers that produce GPA gasoline and to eliminate the generation of windfall credits by refineries or importers that have gasoline sulfur baselines below 150 ppm sulfur. This action is of limited impact in that it only applies to GPA gasoline and only for 2007 and 2008; it does not impose any new information collection requirements on the regulated entities.

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 in 40 CFR are listed in 40 CFR part 9.

#### C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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 final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Today's action does not apply to or affect small refiners or any other small entity.

As stated above, today's action amends the credit generation provisions of the GPA gasoline sulfur program to yield the correct number of credits for GPA gasoline and eliminate the generation of windfall credits by refineries or importers that have gasoline sulfur baselines below 150 ppm sulfur.

#### D. 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 § 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, § 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 § 205 do not apply when they are inconsistent with applicable law. Moreover, § 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 § 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 amending 40 CFR 80.285, 80.310, and 80.415 to correct the credit generation provisions for GPA gasoline. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

#### *E. 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 consult 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 final 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. 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. Although section 6 of Executive Order 13132 does not apply to this rule, we did consult with State and local officials in developing this rule.

#### *F. 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 corrects the credit generation provisions for GPA gasoline under the Tier 2 program. This final rule does not have tribal implications, as specified in Executive Order 13175.

#### *G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks*

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 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. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

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.

#### *I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 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 action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added 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 each House of the Congress and to the Comptroller General of the United States. EPA 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 January 1, 2007.

**List of Subjects in 40 CFR Part 80**

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

Dated: September 14, 2006.

**Stephen L. Johnson,**  
*Administrator.*

■ For the reasons set forth in the preamble, title 40, Chapter 1 of the Code of Federal Regulations 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. 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 150.00 ppm, or the refinery's or importer's 1997–98 baseline calculated under § 80.295 plus 30.00 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30.00 ppm (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

\* \* \* \* \*

■ 3. Section 80.310 is amended by revising paragraphs (a) and (b) to 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 30.00 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 plus 30.00 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30.00 ppm.

(b) Credits are calculated as follows:

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

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.

$S_{Credit}$  = 30.00 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 plus 30.00 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30.00 ppm.

$S_a$  = Actual annual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

\* \* \* \* \*

■ 4. Section 80.415 is amended by revising paragraph (a)(2)(iii) to 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 plus 30.00 ppm as the new sulfur level for purposes of credit generation under § 80.310, if lower than 150.00 ppm.

\* \* \* \* \*

[FR Doc. 06–7809 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

[EPA–HQ–OPP–2006–0324; FRL–8093–7]

**Metrafenone; Pesticide Tolerance**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes a tolerance for residues of metrafenone, (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on imported grape at 0.6 parts per million (ppm), with no U.S. registration. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

**DATES:** This regulation is effective September 20, 2006. Objections and requests for hearings must be received on or before November 20, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0324. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–