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40 CFR Ch. I (7-1-04 Edition)

(2) Nonroad, locomotive, or marine diesel fuel.

(3) Diesel fuel additives.

(4) Heating oil.

(5) Other distillate fuels.

(6) Motor oil that is used as or intended for use as fuel in diesel motor vehicles or nonroad diesel engines or is blended with diesel fuel for use in diesel motor vehicles or nonroad diesel engines, including locomotive and marine diesel engines, at any downstream location.

(b) *Excluded fuel.* The provisions of this subpart do not apply to distillate fuel that is designated for export outside the United States in accordance with § 80.598, identified for export by a transfer document as required under § 80.590, and that is exported.

§ 80.502 What definitions apply for purposes of this subpart?

The definitions of § 80.2 and the following additional definitions apply to this subpart I:

(a) *Entity* means any refiner, importer, distributor, retailer or wholesale-purchaser consumer of any distillate fuel.

(b) *Facility* means any place, or series of places, where an entity produces, imports, or maintains custody of any distillate fuel from the time it is received to the time custody is transferred to another entity, except as described in paragraphs (b)(1) through (b)(4) of this section:

(1) Where an entity maintains custody of a batch of diesel fuel from one place in the distribution system to another place (*e.g.*, from a pipeline to a terminal), all owned by the same entity, both places combined are considered to be one single aggregated facility, except where an entity chooses to treat components of such an aggregated facility as separate facilities. The choice made to treat these places as separate facilities may not be changed by the entity during any applicable compliance period. Except as specified in paragraph (b)(2) of this section, where compliance requirements depend upon facility-type, the entire facility must comply with the requirements that apply to its components as follows:

(i) If an aggregated facility includes a refinery, the entire facility must comply with the requirements applicable to refineries.

(ii) If an aggregated facility includes a truck loading terminal but not a refinery, the entire facility must comply with the requirements applicable to truck loading terminals.

(2) A refinery or import facility may not be aggregated with facilities that receive fuel from other refineries or import facilities, either directly or indirectly. For example, a refinery may not be aggregated with a terminal that receives any fuel from a common carrier pipeline. However, a refinery may be aggregated with a pipeline and terminal that are owned by the same entity and which receive no fuel from any source other than the refinery. If a refinery or import facility is aggregated with other facilities, then the aggregated facility is treated as a refinery or import facility.

(3) Retail outlets or wholesale purchaser consumers may not be aggregated with any other facility.

(4) Where an entity maintains custody of diesel fuel in one or more mobile components (*e.g.*, rail, barge, or trucking operations) the mobile components may be aggregated as a single facility. Mobile components may also be aggregated with a facility from which they receive fuel or a facility to which they deliver fuel. However, mobile components may not be aggregated with both a facility from which they receive fuel and a facility to which they deliver fuel.

(5) An individual refinery or contiguous pipeline may not be subdivided into more than one facility. An individual terminal may not be subdivided into more than one facility unless approved by the Administrator.

(c) *Truck loading terminal* means any facility that dyes NRLM diesel fuel, pays taxes on motor vehicle diesel fuel per IRS code (26 CFR part 48), or adds a fuel marker pursuant to § 80.510 to heating oil and delivers diesel fuel or heating oil into trucks for delivery to retail or ultimate consumer locations.

(d) *Batch* means a quantity of diesel fuel or distillate which is homogeneous with regard to those properties that are specified for MVNRLM diesel fuel under this subpart I of this part, has

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the same designation under this subpart I (if applicable), and whose custody is transferred from one facility to another facility.

(e) *Downstream location* means any point in the diesel fuel distribution system that is downstream of refineries and import facilities, for example, diesel fuel at facilities of distributors, carriers, retailers, kerosene blenders, and wholesale purchaser-consumers.

[69 FR 39168, June 29, 2004]

EFFECTIVE DATE NOTE: At 69 FR 39168, June 29, 2004, §80.502 was added, effective Aug. 30, 2004.

§§ 80.503–80.509 [Reserved]

§ 80.510 What are the standards and marker requirements for NRLM diesel fuel?

(a) *Beginning June 1, 2007*. Except as otherwise specifically provided in this subpart, all NRLM diesel fuel is subject to the following per-gallon standards:

(1) Sulfur content. 500 parts per million (ppm) maximum.

(2) Cetane index or aromatic content, as follows:

(i) A minimum cetane index of 40; or

(ii) A maximum aromatic content of 35 volume percent.

(b) *Beginning June 1, 2010*. Except as otherwise specifically provided in this subpart, all NR and LM diesel fuel is subject to the following per-gallon standards:

(1) Sulfur content.

(i) 15 ppm maximum for NR diesel fuel.

(ii) 500 ppm maximum for LM diesel fuel.

(2) Cetane index or aromatic content, as follows:

(i) A minimum cetane index of 40; or

(ii) A maximum aromatic content of 35 volume percent.

(c) *Beginning June 1, 2012*. Except as otherwise specifically provided in this subpart, all NRLM diesel fuel is subject to the following per-gallon standards:

(1) Sulfur content. 15 ppm maximum.

(2) Cetane index or aromatic content, as follows:

(i) A minimum cetane index of 40; or

(ii) A maximum aromatic content of 35 volume percent.

(d) *Marking provisions*. From June 1, 2007 through May 31, 2010:

(1) Except as provided for in paragraph (i) of this section, prior to distribution from a truck loading terminal, all heating oil shall contain six milligrams per liter of marker solvent yellow 124.

(2) All motor vehicle and NRLM diesel fuel shall be free of solvent yellow 124.

(3) Any diesel fuel that contains greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 shall be deemed to be heating oil and shall be prohibited from use in any motor vehicle or nonroad diesel engine (including locomotive, or marine diesel engines).

(4) Except as provided for in paragraph (i) of this section, any diesel fuel, other than jet fuel or kerosene that is downstream of a truck loading terminal, that contains less than 0.10 milligrams per liter of marker solvent yellow 124 shall be considered motor vehicle diesel fuel or NRLM diesel fuel, as appropriate.

(5) Any heating oil that is required to contain marker solvent yellow 124 pursuant to the requirements of this paragraph (d) must also contain visible evidence of dye solvent red 164.

(e) *Marking provisions*. From June 1, 2010 through May 31, 2012:

(1) Except as provided for in paragraph (i) of this section, prior to distribution from a truck loading terminal, all heating oil and diesel fuel designated as 500 ppm sulfur LM diesel fuel shall contain six milligrams per liter of solvent yellow 124.

(2) All motor vehicle and NR diesel fuel shall be free of marker solvent yellow 124.

(3) Any diesel fuel that contains greater than or equal to 0.10 milligrams per liter of marker solvent yellow 124 shall be deemed to be LM diesel fuel or heating oil, as appropriate, and shall be prohibited from use in any motor vehicle or nonroad diesel engine (except for locomotive or marine diesel engines).

(4) Except as provided for in paragraph (i) of this section, any diesel fuel, other than jet fuel or kerosene that is downstream of a truck loading terminal, that contains less than 0.10 milligrams per liter of marker solvent yellow 124 shall be considered motor