

(3)(i) If the refiner fails to produce the necessary volume of 15 ppm sulfur MVNRLM diesel fuel by June 1, 2006 and every year thereafter through the deadlines specified under paragraph (d)(1)(i) of this section, the refiner must report this in its annual report under § 80.604, and the adjustment of gasoline sulfur standards under paragraph (d)(2)(i) of this section will be considered void as of January 1, 2004.

(ii) If such a refiner had produced gasoline above its interim gasoline sulfur standard of § 80.240(a) prior to June 1, 2006, such fuel will not be considered in violation of the small refiner standards under § 80.240(a), provided the refiner obtains and uses a quantity of gasoline sulfur credits equal to the volume of gasoline exceeding the small refiner standards multiplied by the number of parts per million by which the gasoline exceeded the small refiner standards.

(e) *Multiple refineries.* The provisions of this section shall apply separately for each refinery owned or operated by a NRLM diesel fuel small refiner.

(f) *Other provisions.* From June 1, 2007 through May 31, 2010, a refiner who is an approved motor vehicle diesel fuel small refiner under § 80.550(a) but does not qualify as a NRLM diesel fuel small refiner under § 80.550(b) may produce NRLM diesel fuel that is exempt from the per-gallon sulfur standard and the cetane or aromatics standard of § 80.510(a). This exemption does not apply to diesel fuel sold or intended for sale in the areas listed in § 80.510(g)(1) or (g)(2). From June 1, 2010 through May 31, 2012, NR and LM diesel fuel produced by such refiners is subject to the standards under § 80.510(b) and beginning June 1, 2012, all NRLM diesel fuel is subject to the standards under § 80.510(c).

[69 FR 39179, June 29, 2004, as amended at 71 FR 25718, May 1, 2006]

§ 80.555 What provisions are available to a large refiner that acquires a small refiner or one or more of its refineries?

(a) In the case of a refiner without approved small refiner status who acquires a refinery from a refiner with approved status as a motor vehicle diesel fuel small refiner or a NRLM diesel

fuel small refiner under § 80.551(g), the applicable small refiner provisions of §§ 80.552 and 80.554 may apply to the acquired refinery for a period of up to 30 months from the date of acquisition of the refinery. In no case shall this period extend beyond May 31, 2010 for a refinery acquired from a motor vehicle diesel fuel small refiner or beyond the dates specified in § 80.554(a) or (b), as applicable, for a refinery acquired from a NRLM diesel fuel small refiner.

(b) A refiner may apply to EPA for up to an additional six months to comply with the standards of § 80.510 or 80.520 for the acquired refinery if more than 30 months would be required for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time. EPA will base a decision to approve additional time on information provided by the refiner and on other relevant information. In no case will EPA extend the compliance date beyond May 31, 2010 for a refinery acquired from a motor vehicle diesel fuel small refiner or beyond the dates specified in § 80.554(a) or (b), as applicable, for a refinery acquired from a NRLM diesel fuel small refiner.

(c) Refiners who acquire a refinery from a refiner with approved status as a motor vehicle diesel fuel small refiner or a NRLM diesel fuel small refiner under § 80.551(g), shall notify EPA in writing no later than 20 days following the acquisition.

[69 FR 39180, June 29, 2004]

§§ 80.556–80.559 [Reserved]

OTHER HARDSHIP PROVISIONS

§ 80.560 How can a refiner seek temporary relief from the requirements of this subpart in case of extreme hardship circumstances?

(a) EPA may, at its discretion, grant a refiner of crude oil that processes crude oil through refinery processing units, for one or more of its refineries, temporary relief from some or all of the provisions of this subpart. Such relief shall be no less stringent than the small refiner compliance options specified in § 80.552 for motor vehicle diesel

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fuel and §80.554 for NRLM diesel fuel. EPA may grant such relief provided that the refiner demonstrates that—

(1) Unusual circumstances exist that impose extreme hardship and significantly affect the refiner's ability to comply by the applicable date; and

(2) It has made best efforts to comply with the requirements of this subpart.

(b)(1) For motor vehicle diesel fuel, applications must be submitted to EPA by June 1, 2002 to the following address: U.S. EPA—Attn: Diesel Hardship, Transportation and Regional Programs Division (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (certified mail/return receipt) or Attn: Diesel Hardship, Transportation and Regional Programs Division, 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail/return receipt). EPA reserves the right to deny applications for appropriate reasons, including unacceptable environmental impact. Approval to distribute motor vehicle diesel fuel not subject to the 15 ppm sulfur standard may be granted for such time period as EPA determines is appropriate, but shall not extend beyond May 31, 2010.

(2) For NRLM diesel fuel, applications must be submitted to EPA by June 1, 2005 to the following address: U.S. EPA—Attn: Diesel Hardship, Transportation and Regional Programs Division (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (certified mail/return receipt) or Attn: Diesel Hardship, Transportation and Regional Programs Division, 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail/return receipt). EPA reserves the right to deny applications for appropriate reasons, including unacceptable environmental impact. Approval to distribute NRLM diesel fuel not subject to the 500 ppm sulfur standard may be granted for such time period as EPA determines is appropriate, but shall not extend beyond May 31, 2010 for NR diesel fuel and May 31, 2012 for NRLM diesel fuel. Approval to distribute NRLM diesel fuel not subject to the 15 ppm sulfur standard may be granted for such time period as EPA determines is appropriate, but shall not extend beyond May 31, 2014.

(c) Applications must include a plan demonstrating how the refiner will

comply with the requirements of this subpart as expeditiously as possible. The plan shall include a showing that contracts are or will be in place for engineering and construction of desulfurization equipment a plan for applying for and obtaining any permits necessary for construction or operation, projected timeline for beginning and completing construction, and for beginning actual operation of such equipment, and a description of plans to obtain necessary capital, and a detailed estimate of when the requirements of this subpart will be met.

(d) Applicants must provide, at a minimum, the following information:

(1) Detailed description of efforts to obtain capital for refinery investments and efforts made to obtain credits for compliance under §80.531 for motor vehicle diesel fuel or §§80.535 through 80.536 for NRLM diesel fuel;

(2) Bond rating of entity that owns the refinery (in the case of joint ventures, include the bond rating of the joint venture entity and the bond ratings of all partners; in the case of corporations, include the bond ratings of any parent or subsidiary corporations); and

(3) Estimated capital investment needed to comply with the requirements of this subpart by the applicable date.

(e) In addition to the application requirements of paragraph (b) through (d) of this section, a refiner's application for temporary relief under this paragraph (e) must also include a compliance plan. Such compliance plan shall demonstrate how the refiner will engage in a quality assurance testing program, where appropriate, to ensure that the following conditions are met:

(1)(i) Its motor vehicle diesel fuel subject solely to the sulfur standards under §80.520(c) has not caused motor vehicle diesel fuel subject to the 15 ppm sulfur standard §80.520(a)(1) to fail to comply with that standard; or

(ii) Its NRLM diesel fuel subject solely to the 500 ppm sulfur standard under §80.510(a) has not caused NRLM diesel fuel subject to the 15 ppm sulfur standard under §80.510(b) or (c) to fail to comply with that standard.

(2) The quality assurance program must at least include periodic sampling

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and testing at the party's own facilities and at downstream facilities in the refiner's or importer's diesel fuel distribution system, to determine compliance with the applicable sulfur standards for both categories of motor vehicle diesel fuel; examination at the party's own facilities and at applicable downstream facilities, of product transfer documents to confirm appropriate transfers and deliveries of both products; and inspection of retailer and wholesale purchaser-consumer pump stands for the presence of the labels and warning signs required under this section. Any violations that are discovered shall be reported to EPA within 48 hours of discovery.

(f) Applications under this section must be accompanied by:

(1) A letter signed by the president, 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.

(2) The name, address, phone number, facsimile number and e-mail address of a corporate contact person.

(g) Applicants must also provide any other relevant information requested by EPA.

(h) Refiners who are granted a hardship relief standard for any refinery and importers of fuel subject to temporary foreign refiner relief standards, must comply with the requirements of § 80.561(f).

(i) EPA may impose any reasonable conditions on waivers under this section, including limitations on the refinery's volume of motor vehicle diesel fuel and NRLM diesel fuel subject to temporary refiner relief standards.

(j) The provisions of this section are available only to refineries that produce diesel fuel from crude.

(k) The individual refinery sulfur standard and the compliance plan will be approved or disapproved by the Administrator, and approval will be effective when the refiner receives an approval letter from EPA. Unless approved, the refiner or, where applicable, the importer must comply with the motor vehicle diesel fuel standard under § 80.520(a)(1) by the appropriate compliance date specified in § 80.500 or the NRLM diesel fuel standards and

compliance dates under § 80.510(a), (b), and (c) as applicable.

(l) If EPA finds that a refiner provided false or inaccurate information on its application for hardship relief, EPA's approval of the refiners application will be void *ab initio*.

[66 FR 5136, Jan. 18, 2001, as amended at 69 FR 39181, June 29, 2004]

§ 80.561 How can a refiner or importer seek temporary relief from the requirements of this subpart in case of extreme unforeseen circumstances?

In appropriate extreme, unusual, and unforeseen circumstances (for example, natural disaster or refinery fire) which are clearly outside the control of the refiner or importer and which could not have been avoided by the exercise of prudence, diligence, and due care, EPA may permit a refiner or importer, for a brief period, to distribute motor vehicle diesel fuel or NRLM diesel fuel which does not meet the requirements of this subpart if:

(a) It is in the public interest to do so (e.g., distribution of the nonconforming diesel fuel is necessary to meet projected shortfalls which cannot otherwise be compensated for);

(b) The refiner or importer exercised prudent planning and was not able to avoid the violation and has taken all reasonable steps to minimize the extent of the nonconformity;

(c) The refiner or importer can show how the requirements for motor vehicle diesel fuel or NRLM diesel fuel will be expeditiously achieved;

(d) The refiner or importer agrees to make up any air quality detriment associated with the nonconforming motor vehicle diesel fuel or NRLM diesel fuel, where practicable;

(e) The refiner or importer pays to the U.S. Treasury an amount equal to the economic benefit of the nonconformity minus the amount expended pursuant to paragraph (d) of this section, in making up the air quality detriment; and

(f)(1) In the case of motor vehicle diesel fuel distributed under this section that does not meet the 15 ppm sulfur standard under § 80.520(a)(1), such diesel fuel shall not be distributed for use in