

§ 80.501 What fuel is subject to the provisions of this subpart?

(a) *Included fuel and additives.* The provisions of this subpart apply to the following fuels and additives except as specified in paragraph (b) of this section:

- (1) Motor vehicle diesel fuel.
- (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.

[69 FR 39168, June 29, 2004]

§ 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.

(iii) *Situations where a refinery is aggregated with a truck loading terminal.*

(A) Where a refinery is aggregated with a truck loading terminal, diesel fuel or other product subject to the requirements of this subpart I produced by such refinery and distributed over the truck terminal rack must be included in refinery batches that may be based on shipments to a truck terminal rack tank or on the total volumes delivered to tanker trucks for a period not to exceed 1 calendar month per batch.

(B) Where a refinery is aggregated with a truck loading terminal, diesel fuel or other product subject to the requirements of this subpart I that were imported or produced by another refinery, and that are distributed through the refinery or truck terminal rack, must be treated as previously designated fuel for which the aggregated facility is responsible for all applicable balance and downgrade requirements under §§ 80.527, 80.598, 80.599 and related recordkeeping and reporting requirements like any other distributor downstream from the refiner or importer.

(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. Likewise, a refinery may not be aggregated

Environmental Protection Agency

§ 80.502

with a mobile facility that is also carrying another entity's fuel; it may however be aggregated with a mobile facility that does not receive 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) Mobile components and mobile facilities. (i) Where an entity maintains custody of diesel fuel in one or more mobile components (*e.g.*, rail, barge, shipping, 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.

(ii) When an entity maintains title to, but not custody of, diesel fuel in one or more mobile components, the entity may treat the mobile component(s) as a facility under this paragraph (b), but only for the fuel to which the entity has title. In the event that title changes while a mobile component is in transport (but the fuel physically remains in the same mobile facility), the original entity that had title to the fuel continues to be responsible for the designate and track requirements until custody of the fuel is transferred from the mobile facility.

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

(1) In the case of aggregated facilities consisting of a refinery and a truck loading terminal, a batch may be defined by one of the following methods:

(i) The sum of the deliveries from the truck loading terminal rack to trucks for periods not to exceed 1 month;

(ii) Each individual truck or truck compartment; or

(iii) For refineries with "certification tanks" where testing is performed and "rack tanks" that feed the truck loading terminal rack, each transfer from the certification tank to the rack tank. If this method of determining a batch is selected, it must be the sole method used and must be performed such that no double-counting or undercounting of volumes occurs.

(2) [Reserved]

(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.

(f) *Definition of PADD*. For the purposes of this subpart only, the following definitions of PADDs apply:

(1) The following States are included in PADD I:

Connecticut
Delaware
District of Columbia
Florida
Georgia
Maine
Maryland
Massachusetts
New Hampshire
New Jersey
New York
North Carolina
Pennsylvania
Rhode Island
South Carolina
Vermont
Virginia
West Virginia

(2) The following States are included in PADD II:

Illinois
Indiana

§§ 80.503–80.509

40 CFR Ch. I (7–1–08 Edition)

Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
Oklahoma
South Dakota
Tennessee
Wisconsin

(3) The following States are included in PADD III:

Alabama
Arkansas
Louisiana
Mississippi
New Mexico
Texas

(4) The following States are included in PADD IV:

Colorado
Idaho
Montana
Utah
Wyoming

(5) The following States are included in PADD V:

Alaska
Arizona
California
Hawaii
Nevada
Oregon
Washington

(6) The following areas are included in PADD VI:

U.S. Virgin Islands
Commonwealth of Puerto Rico

[69 FR 39168, June 29, 2004, as amended at 70 FR 70509, Nov. 22, 2005; 71 FR 25716, May 1, 2006]

§§ 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.