

(e) The total volume of motor vehicle diesel fuel produced for use in the United States and designated as meeting the 15 ppm sulfur content standard under paragraph (d) of this section must meet or exceed 85 percent of the baseline volume established under paragraph (c) of this section, except that for the first compliance period from June 1, 2006 through June 30, 2007, the total volume must meet or exceed 92 percent of the baseline volume.

(f) Compliance with the volume requirements in paragraph (e) of this section shall be determined each compliance period. Annual compliance periods shall be from July 1 through June 30. For the year 2006, the compliance period shall be from June 1, 2006 through June 30, 2007 and for the year 2009 the compliance period shall be from July 1, 2009 through May 31, 2010.

(g) If a refiner fails to comply with the requirements of paragraph (d) of this section, or if approval of the application, including the baseline, was based on false or inaccurate information, the extension of the applicable small refiner gasoline sulfur standards under this section shall be void ab initio, and all gasoline produced by the refinery must meet the gasoline sulfur standards under subpart H of this Part as if there had been no extension of the small refiner gasoline sulfur standards.

(h) If for any compliance period a refiner fails to meet the volume requirements in paragraph (e) of this section, the extension of the small refiner gasoline sulfur standards shall be void for that compliance period and for all succeeding compliance periods and all gasoline produced by the refinery must meet the gasoline sulfur standards under subpart H of this part as if there had been no extension of the small refiner gasoline sulfur standards under this section for such compliance periods.

(i) A refiner that is approved for an extension of the interim small refiner gasoline sulfur standards under this section must meet all applicable recordkeeping and reporting requirements of §§ 80.592, 80.593, and 80.594, and shall meet all the recordkeeping and reporting requirements under §§ 80.210, 80.365 and 80.370. Any foreign refiner shall

meet all additional requirements under §§ 80.620 and 80.410.

(j) A refiner approved for the small refiner gasoline sulfur standards extension under this section may not generate or use credits under § 80.531(a) or (e), or § 80.532.

(k) A refiner may petition the Administrator to vacate an extension of the small refiner gasoline sulfur content standards. EPA may grant such a petition, effective July 1 of the compliance period following receipt of such petition (or effective June 1, 2006, if applicable). Upon such effective date, all gasoline produced by the refiner must meet the gasoline sulfur content standards under subpart H of this part as if there had been no extension of the small refiner gasoline sulfur content standards under this section. Upon such effective date, the refiner shall not be subject to the requirements of this section.

(l) The provisions of this section shall apply separately for each refinery of a refiner.

[66 FR 5136, Jan. 18, 2001, as amended at 69 FR 39179, June 29, 2004; 71 FR 25718, May 1, 2006]

§ 80.554 What compliance options are available to NRLM diesel fuel small refiners?

(a) *Option 1:* A refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may produce NRLM diesel fuel from crude oil from June 1, 2007 through May 31, 2010, that is exempt from the standards under § 80.510(a), but only for a refinery located outside the areas specified under § 80.510(g)(1).

(1) The volume of NRLM diesel fuel that is exempt from § 80.510(a) must be less than or equal to 105 percent of B_{NRLM} as defined under § 80.533, less any volume of heating oil produced.

(2) Any volume of NRLM diesel fuel in excess of the volume allowed under (a)(1) of this section will be subject to the 500 ppm sulfur standard under § 80.510(a).

(3) High-sulfur NRLM produced under this paragraph must—

(i) Be dyed red pursuant to the provisions of § 80.520 at the point of production or importation;

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(ii) Be associated with a product transfer document that bears a unique product code as specified under § 80.590; and

(iii) Not be delivered into areas specified under § 80.510(g)(1).

(4) From June 1, 2007 through May 31, 2010, a refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may produce at a refinery located in 80.510(g)(2) NRLM diesel fuel that is exempt from the standards under § 80.510(a) only if the refiner first obtains approval from the Administrator for a compliance plan. The compliance plan must detail how the refiner will segregate any fuel produced that does not meet the standards under § 80.510(a) from the refinery through to the ultimate consumer from fuel having any other designations and from fuel produced by any other refiner. The compliance plan must also identify all ultimate consumers to whom the refiner supplies the fuel that does not meet the standards under § 80.510(a).

(b) *Option 2:* A refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may produce NR diesel fuel from crude oil from June 1, 2010, through May 31, 2014, and NRLM diesel fuel from crude oil from June 1, 2012 through May 31, 2014 that is subject to the standards under § 80.510(a), but only for a refinery located outside the areas specified under § 80.510(g)(1).

(1) The volume of NR diesel fuel that may be subject to the 500 ppm sulfur standard from June 1, 2010 through June 30, 2011 must be less than or equal to 113 percent of B_{NRLM} , and from July 1, 2011 through May 31, 2012 must be less than or equal to 96 percent of B_{NRLM} , as defined under § 80.533, less any volume of locomotive and marine diesel fuel produced.

(2) The volume of NRLM diesel fuel that may be subject to the 500 ppm sulfur standard from June 1, 2012 through June 30, 2013 must be less than or equal to 113 percent of B_{NRLM} , and from July 1, 2013 through May 31, 2014 must be less than or equal to 96 percent of B_{NRLM} , as defined under § 80.533.

(3) NRLM diesel fuel produced in excess of the volume allowed under paragraph (b)(1) of this section will be sub-

ject to the standards under § 80.510(b) and (c).

(4) 500 ppm sulfur NRLM diesel fuel produced under this paragraph must—

(i) Bear a unique product code as specified under § 80.590; and

(ii) Not be sold or delivered into areas specified under § 80.510(g)(1).

(5) From June 1, 2010 through May 31, 2012, for NR diesel fuel, and from June 1, 2012 through May 31, 2014 for NRLM diesel fuel, a refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may produce, at a refinery located in Alaska, NR and NRLM diesel fuel, as applicable, from crude oil that is subject to the standards of § 80.510(a), only if the refiner first obtains approval from the Administrator for a compliance plan. The compliance plan must detail how the refiner will segregate any fuel produced subject to the standards under § 80.510(a) from the refinery through to the ultimate consumer from fuel having any other designations and from fuel produced by any other refiner. The compliance plan must also identify all ultimate consumers to whom the refiner supplies the fuel that does not meet the standards under § 80.510(a).

(c) *Option 3:* A refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may generate diesel fuel credits under the provisions of § 80.535(b) and (d), except as provided in paragraph (d)(1) of this section.

(d) *Option 4:* (1) In lieu of Options 1, 2, and 3 of this section, a refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may choose to adjust its small refiner gasoline sulfur standards, subject to the following conditions:

(i) From June 1, 2006 until the expiration of the refiner's small refiner gasoline sulfur standards (through December 31, 2007 or 2010) 95 percent of the total MVNRLM diesel fuel produced by the refiner must be accurately designated under § 80.598(a) as meeting the 15 ppm sulfur standard of § 80.510(b).

(ii) The refiner must produce MVNRLM diesel fuel each year or partial year under paragraph (d)(1)(i) of this section at a volume that is equal to or greater than 85 percent of

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B_{MVNRLM} , as defined in § 80.533, calculated on an annual basis.

(2)(i) For a refiner meeting the conditions of paragraph (d)(1) of this section, beginning January 1, 2004, the applicable small refiner's annual average and per-gallon cap gasoline sulfur standards will be the standards of § 80.240(a) increased by a factor of 1.20 for the duration of the refiner's small refiner gasoline sulfur standards under § 80.240(a) or § 80.553 (*i.e.*, through calendar years 2007 or 2010).

(ii) In no case may the per-gallon cap exceed 450 ppm.

(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 be-

ginning 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]