

said that some sort of “grace period” of additional lead time before the non-small refiner sulfur standards take effect would address this issue.

We believe these concerns are valid and are proposing that an appropriate period of lead time for compliance with the nonroad diesel sulfur requirements be provided where a refiner purchases any refinery owned by a small refiner, whether by purchase of the refinery or purchase of the small refiner entity. We propose that a refiner that acquires a refinery from an approved small refiner be provided 24 additional months from the date of the completion of the purchase transaction (or until the end of the applicable small refiner relief interim period if it is within 24 months—June 1, 2010, for 500 ppm fuel and June 1, 2014, for 15 ppm fuel). During this interim period, production at the newly-acquired refinery could remain at the interim sulfur levels that applied to that refinery for the previous small refiner owner under the small refiner options discussed below. At the end of this period, the refiner would need to comply with the “non-small refinery” sulfur standards.

We expect that in most if not all cases, the proposed 24 months of additional lead time would be sufficient for the new refiner-owner to accomplish the necessary engineering, permitting, construction, and start-up of the necessary desulfurization project, since planning for this could be expected to be a part of any purchase decision. If a refiner nonetheless believed that the technical characteristics of its planned desulfurization project would require additional lead time, the refiner could apply for additional time and EPA would consider such requests on a case-by-case basis. Such an application would be based on the technical factors supporting the need for more time and include detailed technical information and projected schedules for engineering, permitting, construction, and startup. Based on information provided in such an application and other relevant information, EPA would decide whether additional time was technically necessary and, if so, how much additional time would be appropriate. As discussed above, in no case would compliance dates be extended beyond the time frame of the applicable small refiner relief provisions (June 1, 2010, for 500 ppm fuel and June 1, 2014, for 15 ppm fuel).²⁵⁰

²⁵⁰ This process would be similar to the general hardship provisions of the existing gasoline sulfur and highway diesel sulfur programs and proposed today for nonroad diesel fuel. However, the focus here would be simply on the lead time needed for

During the 24 months additional lead time (and any further lead time approved by EPA for the purchasing refiner), all existing small refiner provisions and restrictions, as described below, would also remain in place for that refinery. This would include the per-refinery volume limitation on the amount of nonroad diesel that could be produced at the small refiner standards. There would be no adverse environmental impact of this provision, since the small refiner would already have been provided relief prior to the purchase and this provision would be no more generous.

b. Small Refiner Losing Its Small Refiner Status

A second situation involves a refiner with approved small refiner status that later loses its small refiner status because it exceeds the small refiner criteria. In the existing gasoline sulfur and highway diesel sulfur programs, an approved small refiner that exceeds 1,500 employees due to merger or acquisition would lose its small refiner status. (We also intended for refiners that exceeded the 155,000 barrel per calendar day crude capacity limit due to merger or acquisition to lose its small refiner status and we are proposing below to amend the regulations to reflect that criterion as well.) This includes exceedences of the criteria caused by acquisitions of assets such as plant and equipment, as well as acquisitions of business entities.

Our intent in the gasoline and highway diesel sulfur programs, as well as the proposed nonroad diesel sulfur program, has been and continues to be to reserve the small refiner relief provisions for a small subset of refiners that generally tend to face the kinds of special challenges discussed above. At the same time, it is also our intent to avoid stifling normal business growth among small refiners. Therefore, we designed our existing regulations, as well as the proposed regulations, to disqualify a refiner from small refiner status when it exceeds the small refiner criteria through its involvement in transactions such as being acquired by or merging with another entity or through the small refiner itself purchasing another entity or assets from another entity. However, as in the existing regulations, we are proposing that if an approved small refiner were to exceed the criteria without merger or acquisition, it would keep its small refiner status.

the technical upgrades and would not consider any claimed financial hardship.

Consistent with our intent in the earlier fuel sulfur programs to limit the use of the small refiner hardship provisions, we also intended in the gasoline sulfur and highway diesel sulfur programs for an exceedence of the other small refiner criterion—a limit of 155,000 barrels per calendar day of crude capacity—due to merger or acquisition to be grounds for disqualifying a refiner’s small refiner status. However, we inadvertently failed to include this second criterion as grounds for disqualification. In today’s action, we propose to resolve this error by adding the crude capacity limit to the employee limit in this context for both the gasoline sulfur and highway diesel sulfur programs, to begin January 1, 2004. Thus, a refiner exceeding either criterion due to merger or acquisition would lose its small refiner status.

We recognize that a small refiner that loses its small refiner status because of a merger or acquisition would face the same type of lead time concerns in complying with the non-small refiner standards as would a non-small refiner that acquired a small refiner’s refinery, as discussed above. Therefore, we propose that the additional lead time proposed above for non-small refiners purchasing a small refiner’s refinery also apply to this situation. Thus, this additional lead time would apply to any refineries, existing or newly-purchased, that had previously been subject to the small refiner program, but would not apply to a newly-purchased refinery that is subject to the non-small refiner standards. Again, there would be no adverse environmental impact because of the newly-purchased small refiner’s pre-existing relief provisions.

The issues discussed in this subsection apply equally to the gasoline sulfur and highway diesel sulfur programs. Thus, we are also proposing that the same provisions relating to additional lead time in cases of financial transaction be applied to the small refiner programs in the earlier fuel sulfur programs. Because these proposed provisions for the existing fuel sulfur programs are independent of today’s nonroad diesel fuel program, we may choose to finalize them separately from and earlier than the identical provisions proposed for today’s nonroad rule. If this occurs, we will seek to finalize nonroad diesel fuel provisions that are identical or as similar as appropriate to those finalized for the gasoline sulfur and highway diesel program.

In addition, we are inviting comment on several other related provisions we are considering: