

(1) We propose above that a small refiner that loses its small refiner status be granted 24 months of lead time at its existing refineries. Should such a small refiner instead be allowed to “grandfather in” its existing small refiner relief program for its existing refinery or refineries? An argument can be made that in purchasing a new refinery or other assets, the small refiner would no longer demonstrate the kind of financial hardship that was the basis for general small refiner relief. However, we also do not intend to stifle normal growth of small refiners, and “grandfathering in” the small refiner interim relief program would have no environmental impact, since it would merely continue an existing program at that refinery.

(2) If a small refiner exceeds the small refiner criteria due to the purchases of a non-small refiner, should the proposed additional lead time apply to that refinery? Or should the refiner be required to meet the non-small refiner standards on schedule at the “new” refinery, since the previous owner could be assumed to have anticipated the new standards and taken steps to accomplish this prior to the purchase?

c. What Options Are Available for Small Refiners?

We propose several provisions intended to reduce the burdens on small

refiners discussed above as well as to encourage their early compliance whenever possible. As described below, these proposed small refiner provisions consist of additional time for compliance and, for small refiners that choose to comply earlier than required, the option of either generating diesel sulfur credits or receiving a limited relaxation of gasoline sulfur requirements.

i. Delays in Nonroad Fuel Sulfur Standards for Small Refiners

We propose that small refiners be allowed to postpone reducing sulfur in nonroad locomotive and marine diesel fuel until June 1, 2010. As described earlier, we are proposing that all refiners producing nonroad diesel fuel be provided significant lead time for making the capital and operational investments to produce 15 ppm fuel, including about three years before the 500 ppm requirement would become effective, and three additional years before 15 ppm was required—June 1, 2007, through May 31, 2010, when 500 ppm fuel could be produced. While this lead time would be useful for small and non-small refiners alike, we believe that in general small refiners would still face disproportionate challenges, and the proposed delay in the first step of control for small refiners would help mitigate these challenges.

Then, beginning June 1, 2010, when the second step of the proposed base program would require 15 ppm fuel for other refiners for nonroad diesel fuel, we propose that small refiners be required to meet a 500 ppm sulfur standard for NR diesel fuel. We propose that this interim standard be effective for four years (until June 1, 2014), after which small refiners would meet the 15 ppm sulfur standard for nonroad diesel fuel. As for other refiners, the small refiner standard for locomotive and marine diesel fuel would remain at 500 ppm. Since new engines with sulfur sensitive emission controls would begin to become widespread during this time, small refiners would need to segregate the 500 ppm NR fuel and supply it only for use in pre-2011 nonroad equipment or in locomotives or marine engines. Section VIII below discusses the requirements for product transfer documents (PTDs) associated with the production of 500 ppm NR fuel by small refiners during this period.

The following table illustrates the proposed small refiner NRLM and NRdiesel standards as compared to the standards proposed in the base nonroad diesel program. (For simplicity, the proposed locomotive and marine diesel standards for small and non-small refiners described above do not appear in the table.)

TABLE IV—4—PROPOSED SMALL REFINER NONROAD DIESEL SULFUR STANDARDS, PPM^a

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015+
Non-small refiners		500	500	500	15	15	15	15	15	15
Small Refiners					500	500	500	500	15	15

Notes:

^a New standards would take effect in June of the applicable year.

We also request comment on a slightly different compliance schedule that would require small refiners to produce 15 ppm nonroad diesel fuel beginning June 1, 2013, one year earlier than proposed above. Such a schedule would align the end of the interim small refiner provisions with the end of the proposed phase-in for nonroad engines and equipment and eliminate higher sulfur nonroad fuel from the distribution system by the time all new nonroad diesel engines required 15 ppm fuel.

The proposed delayed compliance schedule for small refiners is intended to compensate for the relatively higher compliance burdens on these refiners. It is not intended as an opportunity for those refiners to greatly expand their production of uncontrolled diesel fuel (2007–2010) or 500 ppm sulfur fuel

(2010–2014). To help ensure that any significant expansion of refining capacity that a small refiner might undertake in the future would be accompanied by an expansion of desulfurization capacity, we are proposing that small refiners producing higher sulfur fuel limit that production to baseline volume levels.

Specifically, during the first step of the diesel program to 500 ppm (June 2007–June 2010), a small refiner could produce uncontrolled NRLM diesel fuel up to the proposed non-highway baseline for that refiner less any marked heating oil it produces, refer to sub-section B above for an explanation of this baseline. Any diesel fuel produced over its non-highway baseline would be subject to the 500 ppm standard applying to other refiners. Similarly, from June 1, 2010, through May 31,

2014, a small refiner could produce nonroad diesel fuel at 500 ppm up to the non-highway baseline less any volume of heating oil and marked locomotive and marine diesel fuel it produced. Fuel produced in excess of this volume would be subject to the 15 ppm nonroad diesel standard.

ii. Options To Encourage Earlier Compliance by Small Refiners

Some small refiners have indicated that they might find it necessary to produce fuel meeting the nonroad diesel sulfur standards earlier than required by the small refiner program described above, for a variety of reasons. For some small refiners, the distribution systems might limit the number of grades of diesel fuel that will be carried. Others might find it economically advantageous to make 500 ppm or 15