

gasoline sulfur and highway diesel sulfur programs. Under the gasoline sulfur program, we granted waivers to four refiners. Each waiver was designed for the specific situation of that refiner. Under the highway diesel program, we have received two applications for which the decisions are still pending.

As in the earlier rules, we have considered whether any refiners would face particular difficulty in complying with the standards in the lead time provided. As described earlier in this section, we concluded that in general small refiners would experience more difficulty in complying with the standards on time because they have less ability to raise the capital necessary for refinery investments, face proportionately higher costs because of poorer economies of scale, and are less able to successfully compete for limited engineering and construction resources. However, it is possible that other refiners that are not small refiners would also face particular difficulty in complying with the sulfur standards on time. Therefore, we are including in this proposed rule a provision which allows us, at our discretion, to grant temporary waivers from the proposed nonroad diesel sulfur standards based on a showing of extreme hardship circumstances.

The extreme hardship provision allows any domestic or foreign refiner to request a waiver from the sulfur standards based on a showing of unusual circumstances that result in extreme hardship and significantly affect a refiner's ability to comply with either the 500 ppm or 15 ppm sulfur diesel standards by either June 1, 2007, or June 1, 2010, respectively. EPA would evaluate each application on a case-by-case basis, considering the factors described below. If EPA approved a hardship application, we could provide refiners with relief similar to the provision for small refiners. That is, we might provide an allowance for producing high sulfur fuel during the 2007–2010 period when the 500 ppm cap is in effect, or an allowance for producing 500 ppm fuel for a period of time after June 1, 2010. Depending on the situation of the refiner, such approved delays in meeting the sulfur requirements might be shorter than those allowed for small refiners *i.e.*, 3 years for high sulfur fuel beginning June 1, 2007, and 4 years for 500 ppm fuel beginning June 1, 2010, but would not be longer. In such an approval, we would expect to impose appropriate conditions to assure the refiner is making its best effort and to minimize any loss of emission control from the program. As with other relief

provisions established in this rule, any waiver under this provision would be designed to prevent fuel exceeding the 15 ppm standard from being used in 2011 and later model year nonroad engines.

Providing short-term relief to those refiners that need additional time because they face hardship circumstances facilitates adoption of an overall program that reduces NRLM diesel fuel sulfur to 500 ppm beginning in 2007, and nonroad diesel fuel sulfur to 15 ppm in 2010, for the majority of the industry. However, we do not intend for this waiver provision to encourage refiners to delay planning and investments they would otherwise make. We do not expect to grant temporary waivers that apply to more than approximately one percent of the national NRLM diesel fuel pool in any given year.

The regulatory language for today's action includes a list of the information that must be included in a refiner's application for an extreme hardship waiver. If a refiner fails to provide all the information, as specified in the regulations, as part of its hardship application, we can deem the application void. EPA may request additional information as needed. The following are some examples of the types of information that must be contained in an application:

- The crude oil refining capacity and fuel sulfur level(s) of each diesel fuel product at each of the refiner's refineries.
- Technical plan for capital equipment and operating changes to achieve future diesel fuel sulfur levels.
- The anticipated timing for the overall project the refiner is proposing and key milestones to ultimately produce 100 percent of NRLM diesel fuel at 500 ppm sulfur and 100 percent of its nonroad diesel fuel at 15 ppm sulfur.
- The refiner's capital requirements for each step of the proposed projects.
- Detailed plans for financing the project and financial statements demonstrating the nature of and degree of financial hardship and how the requested relief would mitigate this hardship. This would include a description of the overall financial situation of the company and its plans to secure financing for the desulfurization project (*e.g.*, internal cash flow, bank loans, issuing of bonds, sale of assets, or sale of stock).
- Description of the market area for the refiner's diesel fuel products.
- A plan demonstrating how they would achieve the standards as quickly as possible, including a timetable for

obtaining the necessary capital, contracting for engineering and construction resources, obtaining any necessary permits, and beginning and completing construction.

We would consider several factors in our evaluation of the hardship waiver applications. Such factors would include whether a refinery's configuration is unique or atypical; the proportion of non-highway diesel fuel production relative to other refinery products; whether the refiner, its parent company, and its subsidiaries are faced with severe economic limitations (for example, a demonstrated inability to raise necessary capital or an unfavorable bond rating); and steps the refiner has taken to attempt to comply with the standards, including efforts to obtain credits towards compliance. In addition, we would consider the total crude oil capacity of the refinery and its parent or subsidiary corporations, if any, in assessing the degree of hardship and the refiner's role in the diesel market. Finally, we would consider where the diesel fuel would be sold in evaluating the environmental impacts of granting a waiver.

This extreme hardship provision is intended to address unusual circumstances that should be apparent now or would emerge in the near future. Thus, refiners seeking additional time under this provision would have to apply for relief by June 1, 2005. We request comment on this date and whether a separate date would be appropriate for the second (15 ppm) step of the nonroad diesel program to 15 ppm. We would review and act on applications and, if a waiver is granted, would specify a detailed desulfurization schedule under the waiver. Typically, because of EPA's comprehensive evaluation both financial and technical information, action on hardship applications can take six or more months.

D. Should Any Individual States or Territories Be Excluded From This Rule?

1. Alaska

We propose that the diesel fuel sulfur standards—the 500 ppm cap for NRLM diesel fuel beginning June 1, 2007, and the 15 ppm cap for nonroad diesel fuel beginning June 1, 2010—and the aromatics and cetane standards proposed today apply to the portion of Alaska served by the Federal Aid Highway System. However, we propose that Alaska's rural areas be excluded from these proposed fuel content standards. The engine standards proposed today would apply to all nonroad engines throughout Alaska.