

method. In addition, we believe this approach would allow regulated entities to know that they are measuring fuel marker levels accurately and within reasonable site reproducibility limits.

2. What Information Would Have To Be Reported to the Agency?

As noted above, the European Union's (EU) marker requirement would have been in effect for over six years prior to the effective date for the proposed marker requirements and we expect the EU requirement to continue indefinitely. Thus, we anticipate that the European testings standards community will likely have standardized a test procedure to measure the concentration of solvent yellow 124 in distillate fuels prior to the implementation of the proposed marker requirement. Given the limited duration of the proposed marker requirements, we do not anticipate that the United States testing standards community would enact such a standardized test procedure. To the extent that marker test methods that have already been approved by a voluntary consensus standards body³³⁸ (VCSB), such as the International Standards Organization (ISO) or the American Society for Testing and Materials (ASTM), each laboratory facility would be required to report to the Agency the precision and accuracy results as described above for each method for which it is seeking approval. Such submissions to EPA, as described elsewhere, would be subject to the Agency's review for 30 days, and the method would be considered approved in the absence of EPA comment. Laboratory facilities would be required to retain the fuel samples used for precision and accuracy demonstration for a limited amount of time (e.g., 30 days).

For test methods that have not been approved by a VCSB, full test method documentation, including a description of the technology/instrumentation that makes the method functional, as well as subsequent EPA approval of the method would also be required. These submissions would also be subject to the Agency's review for 60 days, and the method would be considered approved in the absence of EPA comment. Submission of VCSB methods would not be required since they are available in the public domain. In addition, industry and the Agency have likely had substantial experience with such methods.

To assist the Agency in determining the performance of a given marker test method (non-VCSB methods, in particular), we propose to reserve the right to send samples of commercially available fuel to laboratories for evaluation. Such samples would be intended for situations in which the Agency had concerns regarding a test method and, in particular, its ability to measure the marker content of a random commercially available diesel fuel. Laboratory facilities would be required to report their results from three tests of this material to the Agency.

Given the limited duration of the proposed marker requirements, we are proposing that qualified test methods would remain valid for as long as the marker requirements remained in effect, provided that additional faults with the test method were not discovered. We are also proposing that ongoing Quality Control (QC) procedures for marker measurement instrumentation similar to those that we proposed for the sulfur test procedures in Section VIII.D above. We request comment on whether such QC procedures are needed for the marker test method.

F. Requirements for Recordkeeping, Reporting, and Product Transfer Documents

1. Registration of Refiners and Importers

By December 31, 2004, refiners and importers that may produce or supply NRLM diesel fuel by June 1, 2007 would be required to register with EPA. There would be no need to register if a refiner (and all its refineries), or an importer, is already registered under the highway diesel program. The registration would include the following information:

- Corporate name and address of the refiner or importer and any parent companies and a contact person.
- Name and address of all refineries or import facilities (including, for importers, the PADD(s)).
- A contact person.
- Location of records.
- Business activity (refiner or importer).
- Capacity of each refinery in barrels of crude oil per calendar day.

2. Application for Small Refiner Status

We propose that an application of a refiner for small refiner status be submitted to EPA by June 1, 2005 and include the following information:

- The name and address of each location at which any employee of the company, including any parent

companies or subsidiaries,³³⁹ worked during the 12 months preceding January 1, 2003;

- The average number of employees at each location, based on the number of employees for each of the company's pay periods for the 12 months preceding January 1, 2003;
- The type of business activities carried out at each location; and
- The total crude oil refining capacity of the corporation. We define total capacity as the sum of all individual refinery capacities for multiple-refinery companies, including any and all subsidiaries, as reported to the Energy Information Administration (EIA) for 2002, or in the case of a foreign refiner, a comparable reputable source, such as professional publication or trade journal.³⁴⁰ Refiners do not need to include crude oil capacity used in 2002 through a lease agreement with another refiner in which it has no ownership interest.

The crude oil capacity information reported to the EIA or comparable reputable source is presumed to be correct. However, in cases where a company disputes this information, we propose to allow 60 days after the company submits its application for small refiner status for that company to petition us with detailed data it believes shows that the EIA or other source's data was in error. We would consider this data in making a final determination about the refiner's crude oil capacity.

Small refinery facilities could not be approved for small refiner status unless the refinery produces diesel fuel from crude oil. This is because a small refiner's relief is intended to address the hardship encountered in making capital improvements to a crude oil refinery. No such costs are involved in operations that only blend previously refined products.

3. Applying for Refiner Hardship Relief

As discussed above in Section IV.C.2, a refiner seeking general hardship relief under the proposed program would apply to EPA and provide several types of financial and technical information, such as internal cash flow data and information on bank loans, bonds, and assets as well as detailed engineering and construction plans and permit status. Applications for hardship relief would be due June 1, 2005.

³³⁹ "Subsidiary" here covers entities of which the parent company has 50 percent or greater ownership.

³⁴⁰ We will evaluate each foreign refiner's documentation of crude oil capacity on an individual basis.

³³⁸ These are standard-setting organizations, like ASTM, and ISO that have broad representation of all interested stakeholders and make decisions by consensus.