

subpart, all NRLM diesel fuel is subject to the following per-gallon standards:

(1) Sulfur content. 500 parts per million (ppm) maximum.

(2) Cetane index and aromatic content.

(i) A minimum cetane index of 40; or

(ii) A maximum aromatic content of 35 volume percent.

(b) *Beginning June 1, 2010.* Except as otherwise specifically provided in this subpart, all NR diesel fuel is subject to the following per-gallon standards:

(1) Sulfur content. 15 parts per million (ppm) maximum.

(2) Cetane index and aromatic content.

(i) A minimum cetane index of 40; or

(ii) A maximum aromatic content of 35 volume percent.

(c) *Marker provisions.* (1) Beginning June 1, 2007, or June 1, 2006, as applicable under § 80.534, and prior to June 1, 2010:

(i) A refiner or importer shall add 6 milligrams per liter of solvent yellow 124 to any heating oil.

(ii) All NRLM and motor vehicle diesel fuel produced by a refiner or imported by an importer shall be free of solvent yellow 124.

(iii) Any diesel fuel that contains greater than or equal to 0.1 milligrams per liter of solvent yellow 124 shall be deemed to be heating oil and shall be prohibited from use in any motor vehicle, nonroad, locomotive, or marine diesel engine.

(iv) Any diesel fuel that contains less than 0.1 milligrams per liter of solvent yellow 124 shall be considered motor vehicle diesel fuel, NR, LM, or NRLM, as appropriate.

(2) Beginning June 1, 2010 and prior to June 1, 2014:

(i) A refiner or importer shall add 6 milligrams per liter of solvent yellow 124 to any LM diesel fuel.

(ii) All NR produced by a refiner or imported by an importer shall be free of solvent yellow 124.

(iii) Any diesel fuel which contains greater than or equal to 0.1 milligrams per liter of solvent yellow 124 shall be deemed to be LM diesel and shall be prohibited from use in any motor vehicle or nonroad diesel engine.

(iv) Any diesel fuel which contains less than 0.1 milligrams per liter of solvent yellow 124 shall be considered other than locomotive and marine diesel fuel and subject to the applicable requirements.

(d) Pursuant and subject to the provisions of §§ 80.536, 80.554, 80.560, and 80.561:

(1) Until June 1, 2010, nonroad, locomotive, and marine NRLM diesel fuel produced or imported in full

compliance with the requirements of those sections is exempt from the per-gallon sulfur content standard and cetane or aromatics standard of paragraph (a) of this section;

(2) Until June 1, 2014, NR diesel fuel produced or imported in full compliance with the requirements of those sections is exempt from the per-gallon standards of paragraph (b) of this section but is subject to a per-gallon standards for sulfur content, cetane, and aromatics of paragraph (a) of this section.

11. A new § 80.511 is added to read as follows:

§ 80.511 What are the per-gallon and marker requirements that apply to nonroad, locomotive, and marine diesel fuels and heating oil downstream of the refinery or importer?

(a) *Applicable dates for marker requirements at downstream locations.*

(1) From June 1, 2006 through May 31, 2010, all NRLM shall contain less than 0.10 milligrams per liter of the marker solvent yellow 124.

(2) Beginning June 1, 2010, all NR diesel fuel shall contain less than 0.10 milligrams per liter of the marker solvent yellow 124.

(b) *Applicable dates for per-gallon standards at downstream locations.* All NR, LM, and NRLM diesel fuel at any downstream location shall comply with the same per-gallon sulfur content and cetane index or aromatics standard ("per-gallon standards" for purposes of this section) of § 80.510, except as follows:

(1)(i) The per-gallon standards of § 80.510(a) shall apply beginning August 1, 2007 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, and shall apply starting October 1, 2007 for retail outlets and wholesale purchaser-consumer facilities.

(ii) The per-gallon standards of § 80.510(b) shall apply beginning July 15, 2010 for all downstream locations other than retail outlets or wholesale purchaser-consumer facilities, and shall apply starting September 1, 2010 for retail outlets and wholesale purchaser-consumer facilities.

(2) Prior to July 15, 2010 at all downstream locations other than retail outlets and wholesale purchaser-consumer facilities and prior to September 1, 2010 at retail outlets and wholesale purchaser-consumer facilities, the 500 ppm per-gallon standard of § 80.510(a) shall not apply at downstream locations once the diesel fuel has been dyed red per Internal Revenue Service Code (26 U.S.C. 4082)

for any fuel that was produced or imported pursuant to the provisions of § 80.536(f) or § 80.554(a) or mixed with fuel produced pursuant to these provisions.

(3) Beginning December 1, 2014, all NR diesel fuel at all downstream locations shall comply with the sulfur standard of § 80.510(b).

(c) *Fuel redesignated at a downstream location.* Subject to the provisions of § 80.527, nonroad, locomotive, and marine diesel fuel may be redesignated at a downstream location to diesel fuel subject to a different § 80.510 per-gallon standard, high sulfur NRLM diesel fuel, LM diesel fuel, or heating oil, provided that the PTD reflects the standard of the new designation and:

(1) The new PTD complies with the appropriate PTD provisions of § 80.590;

(2) Fuel redesignated as high sulfur NRLM diesel fuel complies with the requirements of § 80.536(f)(1) (i) through (iv); and

(3) Fuel redesignated as 500 ppm NR diesel fuel after June 1, 2010 complies with the requirements of § 80.536(g)(2) (i) through (iii).

12. A new § 80.512 is added to read as follows:

§ 80.512 May an importer treat diesel fuel as blendstock?

An importer may exclude diesel fuel that it imports from its calculations under the motor vehicle diesel fuel temporary compliance option and credit calculations under §§ 80.530–80.532, and from its non-highway baseline and nonroad, locomotive and marine diesel fuel credit calculations under §§ 80.534–80.536, and instead the importer may designate such diesel fuel as diesel fuel treated as blendstock (DTAB), if all the following conditions are met:

(a) The DTAB must be included in all applicable baseline, credit and compliance calculations for diesel fuel for a refinery operated by the same company that is the importer. That company must meet all refiner standards and requirements.

(b) The importer-company may not transfer title to the DTAB to another party until the DTAB has been used to produce diesel fuel and all refiner standards and requirements have been met for the diesel fuel produced.

(c) The refinery at which the DTAB is used to produce diesel fuel must be physically located at either the same terminal at which the DTAB first arrives in the U.S., the import facility, or at a facility to which the DTAB is directly transported from the import facility.

(d) The DTAB must be completely segregated from any other diesel fuel,