

sulfur content exceeding 15 ppm provided that:

(1) The additive is added or used in the diesel fuel in a quantity less than 1% by volume of the resultant additive/diesel fuel mixture;

(2) The product transfer document pursuant to § 80.591 indicates that the additive may exceed the 15 ppm sulfur standards of § 80.510(b) or § 80.520(a), that improper use of the additive may result in non-complying fuel, and that the additive complies with the sulfur information requirements of § 80.591(b)(3); and

(3) The additive is not used or intended for use by an ultimate consumer in diesel motor vehicles or nonroad, locomotive, or marine engines.

16. Section 80.522 is revised to read as follows:

**§ 80.522 May used motor oil be dispensed into diesel motor vehicles or nonroad, locomotive, or marine diesel engines?**

No person may introduce used motor oil, or used motor oil blended with diesel fuel, into the fuel system of model year 2007 or later diesel motor vehicles or model year 2011 or later nonroad diesel engines, unless both of the following requirements have been met:

(a) The vehicle or engine manufacturer has received a Certificate of Conformity under 40 CFR Parts 86 or 89 and the certification of the vehicle or engine configuration is explicitly based on emissions data with the addition of motor oil; and

(b) The oil is added in a manner and rate consistent with the conditions of the Certificate of Conformity.

17. Section 80.523 is revised to read as follows:

**§ 80.523 What diesel fuel designation requirements apply to refiners and importers?**

Any refiner or importer shall accurately and clearly designate all fuel it produces or imports for use in diesel motor vehicles as either motor vehicle diesel fuel meeting the 15 ppm sulfur standard under § 80.520(a)(1) or as motor vehicle diesel fuel meeting the 500 ppm sulfur standard under § 80.520(c). Starting June 1, 2007, or June 1, 2006 under the provisions of § 80.535, any refiner or importer shall accurately and clearly designate all other diesel fuel it produces or imports as NR diesel fuel, LM diesel fuel, or NRLM diesel fuel meeting the sulfur standard, if any, applicable to that batch under this subpart, and any heating oil it produces or imports as heating oil.

18. Section 80.527 is revised to read as follows:

**§ 80.527 Under what conditions may motor vehicle or nonroad diesel fuel subject to the 15 ppm sulfur standard be downgraded as diesel fuel subject to the 500 ppm sulfur standard?**

(a) *Definitions.* (1) As used in this section, *downgrade* means changing the classification of undyed diesel fuel subject to the 15 ppm sulfur standard under §§ 80.523 and 80.510(b) or 80.520(a)(1) to diesel fuel subject to the 500 ppm sulfur standard under §§ 80.510(a) or 80.520(c). A downgrade occurs when the change in classification takes place. Changing the classification of undyed diesel fuel subject to the 15 ppm sulfur standard under §§ 80.510(b) or 80.520(a)(1) to heating oil is not a *downgrade* for purposes of this section and is not limited by the provisions of this section.

(2) As used in this section *undyed diesel fuel* means diesel fuel not containing visible evidence of dye solvent red 164.

(b) *Who may downgrade.* Any person in the diesel fuel distribution system who has custody or title to diesel fuel may downgrade it.

(c) *Downgrading limitation.* (1) Except as provided in paragraphs (d) and (e) of this section, a person described in paragraph (c)(4) of this section may not downgrade a total of more than 20% of the undyed diesel fuel (by volume) that is subject to the 15 ppm sulfur standard of §§ 80.510(b) or 80.520(a)(1) while such person has title to or custody of such fuel. In addition, a refiner or importer may only downgrade (subject to the 20% limit) undyed diesel fuel designated under § 80.523 as subject to 15 ppm sulfur standard under §§ 80.510(b) or 80.520(a)(1) after it has been so designated and after it has been moved from the refinery's, or import facility's, storage tank or other vessel where the diesel fuel batch was designated as subject to the sulfur standard of § 80.520(a) or § 80.510(b) under § 80.523.

(2) The limitation of paragraph (c)(1) of this section applies separately to each person who has custody or title of the fuel when it is downgraded.

(3) Compliance with the limitation of paragraph (c)(1) of this section shall be on an annual, calendar year basis (except in 2006 compliance shall be for the period June 1, 2006 through December 31, 2006, and in 2010 compliance shall be for the period January 1 through May 31).

(4) The limitation of this section applies to persons who sell, offer for sale, dispense, supply, store or transport diesel fuel. The limitation does not apply to persons who are transferred custody or title to diesel fuel when it is

dispensed into motor vehicles or nonroad engine equipment at retail outlets.

(d) *Diesel fuel in violation of the 15 ppm standard.* Where diesel fuel subject to the 15 ppm sulfur standard of §§ 80.510(b) or 80.520(a)(1) is found to be in violation of any standard under §§ 80.510(b) or 80.520(a) and is consequently downgraded, the person, or persons, having custody and title to the fuel at the time it is found to be in violation must include the volume of such fuel toward its 20% volume limitation under paragraph (c)(1) of this section, unless the person, or persons, demonstrates that it did not cause the violation.

(e) *Special provisions for retail outlets and wholesale purchaser-consumer facilities.* Notwithstanding the provisions of paragraph (c)(1) of this section, retailers and wholesale purchaser-consumers shall comply with the downgrading limitation as follows:

(1) Retailers and wholesale purchaser-consumers who sell, offer for sale, or dispense undyed diesel fuel that is subject to the 15 ppm sulfur standard under § 80.520(a)(1) are exempt from the volume limitations of paragraph (c)(1) of this section.

(2) A retailer or wholesale purchaser-consumer who does not sell, offer for sale, or dispense diesel fuel subject to the 15 ppm sulfur standard under §§ 80.510(b) or 80.520(a)(1) may not downgrade a volume of diesel fuel classified as subject to the 15 ppm sulfur standard greater than 20% of the total volume of motor vehicle diesel fuel that it sells, offers for sale, or dispenses annually.

(f) *Product transfer documents.* If the custody or title to any diesel fuel that is downgraded under this section is transferred, the product transfer documents under § 80.590 for such fuel must reflect the change in classification to diesel fuel subject to the 500 ppm sulfur standard.

(g) *Recordkeeping requirement.* Any person subject to the provisions of this section, as described in paragraph (c)(4) of this section, who downgrades any undyed diesel fuel previously classified as subject to the 15 ppm sulfur standard under §§ 80.510(b) or 80.520(a)(1) during any calendar year, must make and maintain records sufficient to show compliance with the requirements and limitations of this section.

(h) *Termination of downgrading limitations.* The provisions of this section shall not apply after May 31, 2010.

19. Section 80.530 is revised to read as follows: