

(i) Be dyed red per the provisions of § 80.510(c)(1)(i) at the point of production, importation, or redesignation under § 80.511(c);

(ii) Be associated with a product transfer document that bears a unique product code as specified in § 80.590;

(iii) Be segregated in the distribution system from any 15 ppm sulfur diesel fuel throughout the distribution system to the end-user; and

(iv) Be segregated from any 500 ppm sulfur diesel fuel in the distribution system up to the point where both fuels are dyed red per Internal Revenue Service Code (26 U.S.C. 4082).

(b) *Option 2.* A refiner that has been approved by EPA as a NR diesel fuel small refiner under § 80.551(g) may produce from June 1, 2010, through May 31, 2014, NR diesel fuel subject to the standards of § 80.510(a).

(1) The volume of NR diesel fuel that may be subject to the 500 ppm sulfur standard must be equal to or less than 105 percent of V_{NRLM} as defined in § 80.534, less any volume of marked locomotive and marine diesel fuel pursuant to § 80.510(c).

(2) NR diesel fuel produced in excess of the volume allowed under paragraph (b)(1) of this section will be subject to the standards of § 80.510(b)(1).

(3) 500 ppm NR fuel produced under this paragraph must:

(i) Be dyed red per the provisions of § 80.510(c)(1)(i) at the point of production, importation, or redesignation under § 80.511(c);

(ii) Bear a unique product code as specified in § 80.590; and

(iii) Be segregated in the distribution system from any 15 ppm sulfur diesel fuel or 500 ppm sulfur locomotive and marine diesel fuel throughout the distribution system to the end-user.

(4) Refiners or importers wishing to produce or import 500 ppm sulfur NR diesel fuel and sell it as NR diesel fuel after May 31, 2010 would first have to provide EPA with a plan for EPA approval demonstrating that they will ensure the product segregation described in paragraph (3)(iii) of this section.

(c) *Option 3.* A refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may generate diesel fuel credits under the provisions of § 80.535(b) and (d), except as provided in paragraph (d)(1) of this section.

(d)(1) *Option 4.* In lieu of Options 1, 2, and 3 of this section, a refiner that has been approved by EPA as a NRLM diesel fuel small refiner under § 80.551(g) may choose to adjust its small refiner gasoline sulfur standards, subject to the following conditions:

(i) The refiner must produce NRLM diesel fuel meeting the standards of § 80.510(b) by June 1, 2006 and every year thereafter until the expiration of the refiner's small refiner gasoline sulfur standards (*i.e.*, through calendar years 2007 or 2010);

(ii) The refiner must produce NRLM fuel each year or partial year under paragraph (d)(1)(i) of this section at a volume that is equal to at least 85% of V_{NRLM} , as defined in § 80.534, calculated on an annual basis.

(2)(i) For a refiner meeting the conditions of (d)(1) of this section, beginning January 1, 2004, the applicable small refiner's annual average and per-gallon cap gasoline sulfur standards will be the standards of § 80.240(a) increased by a factor of 1.20 for the duration of the refiner's small refiner gasoline sulfur standards under § 80.240(a) or § 80.553 (*i.e.*, through calendar years 2007 or 2010).

(ii) In no case may the per-gallon cap exceed 450 ppm.

(3)(i) If the refiner fails to produce the necessary volume of 15 ppm NRLM fuel by June 1, 2006 under paragraph (d)(1)(i) of this section, the refiner must report this in its annual report under § 80.599, and the adjustment of gasoline sulfur standards under paragraph (d)(2)(i) of this section will be considered void as of January 1, 2004.

(ii) If such a refiner had produced gasoline above its interim gasoline sulfur standard of § 80.240(a) prior to June 1, 2006, such fuel will not be considered in violation of the small refiner standards under § 80.240(a), provided the refiner obtains and uses a quantity of gasoline sulfur credits equal to the volume of gasoline exceeding the small refiner standards multiplied by the number of parts per million by which the gasoline exceeded the small refiner standards.

(e) The provisions of this section shall apply separately for each refinery owned or operated by a NRLM diesel fuel small refiner.

30. A new § 80.555 is added to read as follows:

§ 80.555 What provisions are available to a large refiner that acquires a small refiner or one or more of its refineries?

(a) In the case of a refiner without approved small refiner status who acquires a refinery from a refiner with approved status as a motor vehicle diesel fuel small refiner or a NRLM diesel fuel small refiner under § 80.551(g), the applicable small refiner provisions of §§ 80.552 and 80.554 may apply to the acquired small refinery for a period of up to 24 months from the date of acquisition of the refinery. In no

case shall this period extend beyond May 31, 2010 for a motor vehicle diesel fuel small refiner or beyond the dates specified in § 80.554(a) or (b), as applicable, for a NRLM diesel fuel small refiner.

(2) A refiner may apply to EPA for additional time to comply with the standards of §§ 80.520 or 80.510 for the acquired refinery if more than 24 months would be required for the necessary engineering, permitting, construction, and start-up work to be completed. Such applications must include detailed technical information supporting the need for additional time and a proposed amount of additional time. EPA will base a decision to approve additional time on information provided by the refiner and on other relevant information. In no case will EPA extend the compliance date beyond May 31, 2010 for a motor vehicle diesel fuel small refiner or beyond the dates specified in § 80.554(a) or (b), as applicable, for a NRLM diesel fuel small refiner.

31. Section 80.560 is amended by revising paragraphs (a), (b), (d), (e), (h), (i), (k) and (l) to read as follows:

§ 80.560 How can a refiner seek temporary relief from the requirements of this subpart in case of extreme hardship circumstances?

(a) EPA may, at its discretion, grant a refiner, for one or more of its refineries, temporary relief from some or all of the provisions of this subpart. Such relief shall be no less stringent than the small refiner compliance options specified in § 80.552 for motor vehicle diesel fuel and § 80.554 for NRLM diesel fuel. EPA may grant such relief provided that the refiner demonstrates that:

(1) Unusual circumstances exist that impose extreme hardship and significantly affect the refiner's ability to comply by the applicable date; and

(2) It has made best efforts to comply with the requirements of this subpart.

(b)(i) For motor vehicle diesel fuel, applications must be submitted to EPA by June 1, 2002 to the following address: Applications for small refiner status must be sent via certified mail with return receipt or express mail with return receipt to: U.S. EPA—Attn: Diesel Hardship (6406J), 1200 Pennsylvania Avenue, NW (6406J), Washington, DC 20460 (certified mail/return receipt) or Attn: Diesel Hardship, Transportation and Regional Programs Division, 501 3rd Street, NW (6406J), Washington, DC 20001 (express mail/return receipt). EPA reserves the right to deny applications for appropriate reasons, including unacceptable environmental impact. Approval to distribute motor