

(4) Refiners who produce motor vehicle diesel fuel or NRLM diesel fuel other than by processing crude oil through refinery processing units.

(f)(1)(i) Refiners who qualify as motor vehicle diesel fuel small refiners under this section and subsequently cease production of diesel fuel from processing crude oil through refinery processing units, or employ more than 1,500 people or exceed the 155,000 bpcd crude oil capacity limit after January 1, 2004 as a result of merger with or acquisition of or by another entity, are disqualified as small refiners, except as provided for under paragraph (f)(4) of this section. If disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(ii) Except as provided under paragraph (f)(3) of this section, any refiner whose status changes under this paragraph shall meet the applicable standards of § 80.520 within a period of up to 30 months from the disqualifying event for any of its refineries that were previously subject to the small refiner standards of § 80.552, but no later than the May 31, 2010.

(2)(i) Refiners who qualify as NRLM diesel fuel small refiners under this section and subsequently cease production of diesel fuel from crude oil, or employ more than 1,500 people or exceed the 155,000 bpcd crude oil capacity limit after January 1, 2004 as a result of merger with or acquisition of or by another entity, are disqualified as small refiners, except as provided for under paragraph (f)(4) of this section. If disqualification occurs, the refiner shall notify EPA in writing no later than 20 days following this disqualifying event.

(ii) Except as provided under paragraph (f)(3) of this section, any refiner whose status changes under this paragraph shall meet the applicable standards of § 80.510 within a period of up to 30 months of the disqualifying event for any of its refineries that were previously subject to the small refiner standards of § 80.552, but no later than the dates specified in § 80.554(a) or (b), as applicable.

(3) A refiner may apply to EPA for up to an additional six months to comply with the standards of § 80.510 or § 80.520

if more than 30 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. 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.

(4) Disqualification under paragraphs (f)(1) or (f)(2) of this section shall not apply in the case of a merger between two previously approved small refiners.

(5) During the period of time up to 30 months provided under paragraph (f)(1)(ii) of this section, and any extension provided under paragraph (f)(3) of this section, the refiner may not generate motor vehicle diesel fuel sulfur credits under § 80.531(e). During the period of time up to 30 months provided under paragraph (f)(2)(ii) of this section, and any extension provided under paragraph (f)(3) of this section, the refiner may not generate NRLM diesel fuel sulfur credits under § 80.535(b) or (d).

(g) Notwithstanding the criteria in paragraph (a) of this section, any small refiner that has been approved by EPA as a small refiner under § 80.235 and meets the criteria of paragraph (a)(1) of this section, will be considered a small refiner under this section as well, for as long as they are a small refiner under § 80.225. The provisions of paragraph (f) of this section apply to any such refiner.

[66 FR 5136, Jan. 18, 2001, as amended at 69 FR 39177, June 29, 2004; 70 FR 40896, July 15, 2005]

§ 80.551 How does a refiner obtain approval as a small refiner under this subpart?

(a)(1)(i) Applications for motor vehicle diesel fuel small refiner status must be submitted to EPA by December 31, 2001.

(ii) Applications for NRLM diesel fuel small refiner status must be submitted to EPA by December 31, 2004.

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(2)(i) In the case of a refiner who acquires or reactivates a refinery that was shutdown or non-operational between January 1, 1999, and January 1, 2000, the application for motor vehicle diesel fuel small refiner status must be submitted to EPA by June 1, 2003.

(ii) In the case of a refiner who acquires or reactivates a refinery that was shutdown or non-operational between January 1, 2002, and January 1, 2003, the application for NRLM diesel fuel small refiner status must be submitted to EPA by June 1, 2006.

(b) 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 Small Refiner Status (6406J), 1200 Pennsylvania Avenue, NW., Washington, DC 20460 (certified mail/return receipt) or Attn: Diesel Small Refiner Status, Transportation and Regional Programs Division, 1310 L Street, NW., 6th floor, Washington, DC 20005 (express mail/return receipt).

(c) The small refiner status application must contain the following information for the company seeking small refiner status, plus any subsidiary companies, any parent company and subsidiaries of the parent company in which the parent has 50 percent or greater ownership, and any joint venture partners:

(1) For motor vehicle diesel fuel small refiners—

(i) A listing of the name and address of each location where any employee worked during the 12 months preceding January 1, 2000; the average number of employees at each location based upon the number of employees for each pay period for the 12 months preceding January 1, 2000; and the type of business activities carried out at each location; or

(ii) In the case of a refiner who acquires or reactivates a refinery that was shutdown or non-operational between January 1, 1999, and January 1, 2000, a listing of the name and address of each location where any employee of the refiner worked since the refiner acquired or reactivated the refinery; the average number of employees at any such acquired or reactivated refinery during each calendar year since the refiner acquired or reactivated the refin-

ery; and the type of business activities carried out at each location.

(2) For NRLM diesel fuel small refiners—

(i) A listing of the name and address of each location where any employee worked during the 12 months preceding January 1, 2003; the average number of employees at each location based upon the number of employees for each pay period for the 12 months preceding January 1, 2003; and the type of business activities carried out at each location; or

(ii) In the case of a refiner who acquires or reactivates a refinery that was shutdown or non-operational between January 1, 2002, and January 1, 2003, a listing of the name and address of each location where any employee of the refiner worked since the refiner acquired or reactivated the refinery; the average number of employees at any such acquired or reactivated refinery during each calendar year since the refiner acquired or reactivated the refinery; and the type of business activities carried out at each location.

(3) The total corporate crude oil capacity of each refinery as reported to the Energy Information Administration (EIA) of the U.S. Department of Energy (DOE) for the most recent 12 months of operation. The information submitted to EIA is presumed to be correct. In cases where a company disagrees with this information, the company may petition EPA with appropriate data to correct the record when the company submits its application for small refiner status. EPA may accept such alternate data at its discretion.

(4) For motor vehicle diesel fuel, an indication of whether the refiner, for each refinery, is applying for—

(i) The ability to produce motor vehicle diesel fuel subject to the 500 ppm sulfur standard under § 80.520(c) or generate credits under § 80.531, pursuant to the provisions of § 80.552(a) or (b); or

(ii) An extension of the duration of its small refiner gasoline sulfur standard under § 80.553, pursuant to the provisions of § 80.552(c).

(5) For NRLM diesel fuel, an indication of whether the refiner, for each refinery, is applying for—

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(i) The ability to delay compliance under § 80.554(a) or (b), or to generate NRLM diesel sulfur credits under § 80.535(b) or (d), pursuant to the provisions of § 80.554(c); or

(ii) An adjustment to its small refiner gasoline sulfur standards under § 80.240(a), pursuant to the provisions of § 80.554(d).

(6) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

(7) Name, address, phone number, facsimile number and e-mail address (if available) of a corporate contact person.

(d) For joint ventures, the total number of employees includes the combined employee count of all corporate entities in the venture.

(e) For government-owned refiners, the total employee count includes all government employees.

(f) Approval of small refiner status for refiners who apply under § 80.550(d) will be based on all information submitted under paragraph (c) of this section, except as provided in § 80.550(e).

(g) EPA will notify a refiner of approval or disapproval of small refiner status by letter. If disapproved, the refiner must comply with the sulfur standards in § 80.510 or 80.520, as appropriate, except as otherwise provided in this subpart.

(h) If EPA finds that a refiner provided false or inaccurate information on its application for small refiner status, upon notice from EPA the refiner's small refiner status will be void *ab initio*.

(i) Upon notification to EPA, an approved small refiner may withdraw its status as a small refiner. Effective on January 1 of the year following such notification, the small refiner will become subject to the sulfur standards in § 80.510 or 80.520, as appropriate, unless one of the other hardship provisions of this subpart apply.

[69 FR 39178, June 29, 2004, as amended at 70 FR 40896, July 15, 2005; 75 FR 22970, Apr. 30, 2010]

§ 80.552 What compliance options are available to motor vehicle diesel fuel small refiners?

(a) A refiner that has been approved by EPA as a motor vehicle diesel fuel small refiner under § 80.551(g) may produce motor vehicle diesel fuel subject to the 500 ppm sulfur standard pursuant to the provisions of § 80.530, except that the volume limits of § 80.530(a)(3) shall only apply to that volume of diesel fuel that is produced or imported during an annual compliance period that exceeds 105 percent of the baseline volume established under § 80.595 (V_{500}). The annual compliance period shall be from July 1 through June 30. For the year 2006, the compliance period shall be from June 1, 2006 through June 30, 2007, and the volume limits shall only apply to that volume V_{500} that exceeds 113 percent of the baseline volume.

(b) A refiner that has been approved by EPA as a motor vehicle diesel fuel small refiner under § 80.551(g) may generate motor vehicle diesel fuel credits pursuant to the provisions of § 80.531, except that for purposes of § 80.531(a), the term "Credit" shall equal V_{15} , without further adjustment.

(c) A refiner that has been approved by EPA as a motor vehicle diesel fuel small refiner under § 80.551(g) may apply for an extension of the duration of its small refiner gasoline sulfur standards pursuant to § 80.553.

(d) A refiner that produces motor vehicle diesel fuel under the provisions of paragraph (a) of this section or generates credits under the provisions of paragraph (b) of this section may not receive an extension of its small refiner gasoline sulfur standard under the provisions of paragraph (c) of this section. A refiner that receives an extension of its small refiner gasoline sulfur standard under the provisions of paragraph (c) of this section may not produce motor vehicle diesel fuel under the provisions of paragraph (a) of this section and may not generate credits under the provisions of paragraph (b) of this section.

(e) The provisions of this section shall apply separately for each refinery