

§ 80.526

40 CFR Ch. I (7–1–14 Edition)

prohibitions applicable to downstream parties.

(c) For purposes of compliance with §§ 80.524(b)(1) and 80.511(b)(1), the product transfer documents must indicate that the fuel to which kerosene is added complies with the 500 ppm sulfur standard for motor vehicle diesel fuel and is for use only in model year 2006 and older diesel motor vehicles, the fuel is properly downgraded pursuant to the provisions of § 80.527 to motor vehicle diesel fuel subject to the 500 ppm sulfur standard, or the applicable NRLM standard.

(d) Kerosene that a kerosene blender adds or intends to add to diesel fuel subject to the 15 ppm sulfur content standard must meet the 15 ppm sulfur content standard, and either of the following requirements:

(1) The product transfer document received by the kerosene blender indicates that the kerosene is diesel fuel that complies with the 15 ppm sulfur content standard.

(2) The kerosene blender has test results indicating the kerosene complies with the 15 ppm sulfur standard.

[66 FR 5136, Jan. 18, 2001, as amended at 70 FR 40895, July 15, 2005; 75 FR 22969, Apr. 30, 2010]

§ 80.526 [Reserved]

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

(a) *Definitions.* As used in this section, downgrade means changing the designation or classification of motor vehicle diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a)(1) to motor vehicle diesel fuel subject to the 500 ppm sulfur standard under § 80.520(c). A downgrade occurs when the change in designation or classification takes place. Changing the designation or classification of motor vehicle diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a)(1) to any designation or classification that is not a motor vehicle diesel fuel is not a downgrade for purposes of this section.

(b) *Who is subject to the downgrade limitation:* Any distributor, retailer, or wholesale purchaser consumer that

takes custody of any diesel fuel designated or classified as #2D 15 ppm sulfur motor vehicle diesel fuel and delivers any diesel fuel designated or classified as #2D 500 ppm motor vehicle diesel fuel.

(c) *Downgrading limitation.* The provisions of this section apply beginning October 15, 2006.

(1) Except as provided in paragraphs (d) and (e) of this section, a person described in paragraph (b) of this section may not downgrade a total of more than 20 percent of the #2D motor vehicle diesel fuel (by volume) that is subject to the 15 ppm sulfur standard of § 80.520(a)(1) to #2D motor vehicle diesel fuel subject to the sulfur standard of § 80.520(c) while such person has custody of such fuel.

(2) The limitation of paragraph (c)(1) of this section applies separately to each facility as defined under § 80.502 where there is custody of the fuel when it is downgraded.

(3) Compliance with the limitation of paragraph (c)(1) of this section applies separately for the compliance periods of October 15, 2006 through May 31, 2007; June 1, 2007 through June 30, 2008; July 1, 2008 through June 30, 2009; July 1, 2009 through May 31, 2010.

(4) Except as provided in paragraph (e) of this section, compliance with the limitation of paragraph (c)(1) of this section shall be as calculated under § 80.599(e).

(d) *Diesel fuel in violation of the 15 ppm standard.* Where motor vehicle diesel fuel subject to the 15 ppm sulfur standard of § 80.520(a)(1) is found to be in violation of any standard under § 80.520(a) and is consequently downgraded to 500 ppm sulfur motor vehicle diesel fuel, the person having custody of the fuel at the time it is found to be in violation must include the volume of such downgraded fuel toward its 20 percent volume limitation under paragraph (c)(1) of this section, unless the person 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 motor vehicle 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 motor vehicle diesel fuel subject to the 15 ppm sulfur standard under § 80.520(a)(1) must comply with the downgrading limitations of paragraph (c) of this section, such that it may not downgrade a volume of motor vehicle diesel fuel, designated as subject to the 15 ppm sulfur standard, for more than 20% of the total volume of motor vehicle diesel fuel that it sells, offers for sale, or dispenses in any compliance period.

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

[69 FR 39172, June 29, 2004, as amended at 71 FR 25717, May 1, 2006]

§§ 80.528–80.529 [Reserved]

TEMPORARY COMPLIANCE OPTION

§ 80.530 Under what conditions can 500 ppm motor vehicle diesel fuel be produced or imported after May 31, 2006?

(a) Beginning June 1, 2006, a refiner or importer may produce or import motor vehicle diesel fuel subject to the 500 ppm sulfur content standard of § 80.520(c) if all of the following requirements are met:

(1) Each batch of motor vehicle diesel fuel subject to the 500 ppm sulfur content standard must be designated by the refiner or importer as subject to such standard, pursuant to § 80.598(a).

(2) The refiner or importer must meet the requirements for product transfer documents in § 80.590 for each batch subject to the 500 ppm sulfur content standard.

(3)(i) The volume of motor vehicle diesel fuel that is produced or imported during a compliance period (V_{500} , as provided in paragraph (a)(5) of this section, may not exceed the following volume limit:

(A) For the compliance periods prior to the period from July 1, 2009 through May 31, 2010, 20 percent of the volume

of motor vehicle diesel fuel that is produced or imported during a compliance period (V_i) plus an additional volume of motor vehicle diesel fuel represented by credits properly generated and used pursuant to the requirements of §§ 80.531 and 80.532.

(B) For the compliance period from July 1, 2009 through May 31, 2010, 20 percent of the volume of motor vehicle diesel fuel that is produced or imported prior to January 1, 2010 during the compliance period (V_i), plus an additional volume of motor vehicle diesel fuel represented by credits properly generated and used pursuant to the requirements of §§ 80.531 and 80.532. From January 1, 2010 through May 31, 2010, the volume of motor vehicle diesel fuel that is produced or imported shall not exceed the volume represented by credits used pursuant to § 80.532.

(ii) The terms V_{500} and V_i have the meaning specified in § 80.531(a)(2).

(4) Compliance with the volume limit in paragraph (a)(3) of this section must be determined separately for each refinery. For an importer, such compliance must be determined separately for each Credit Trading Area (as defined in § 80.531) into which motor vehicle diesel fuel is imported. If a party is both a refiner and an importer, such compliance shall be determined separately for the refining and importation activities.

(5) Compliance with the volume limit in paragraph (a)(3) of this section shall be determined on an annual basis, where the annual compliance period is from July 1 through June 30. For the year 2006, compliance shall be determined for the period June 1, 2006 through June 30, 2007. For the year 2010, compliance shall be determined for the period of July 1, 2009 through May 31, 2010.

(6) Any motor vehicle diesel fuel produced or imported above the volume limit in paragraph (a)(3) of this section shall be subject to the 15 ppm sulfur content standard. However, for any compliance period prior to the compliance period July 1, 2009 through May 31, 2010, a refiner or importer may exceed the volume limit in paragraph (a)(3) of this section by no more than 5 percent of the volume of diesel fuel produced or imported during the compliance period (V_i), provided that for